

No. 12511.

IN THE

# United States Court of Appeals

FOR THE NINTH CIRCUIT

---

HOME LOAN BANK BOARD, FEDERAL SAVINGS AND LOAN  
INSURANCE CORPORATION, *et al.*,

*Appellants,*

*vs.*

MALLONEE, *et al.*, SHAREHOLDERS PROTECTIVE COMMITTEE  
OF LONG BEACH ASSOCIATION, LONG BEACH FEDERAL  
SAVINGS AND LOAN ASSOCIATION, TITLE SERVICE COM-  
PANY, *et al.*,

*Appellees.*

---

FEDERAL HOME LOAN BANK OF SAN FRANCISCO, FAHEY,  
*et al.*,

*Appellants,*

*vs.*

FEDERAL HOME LOAN BANK OF LOS ANGELES, *et al.*,

*Appellees.*

---

Brief for Appellee Long Beach Federal Savings and  
Loan Association, Third-Party Plaintiff and Cross-  
Claimant Below.

---

CHARLES K. CHAPMAN,

17 Ocean Center Building, Long Beach 2, California,

*Attorney for Appellee Third Party Plaintiff and  
Cross-Claimant Below, Long Beach Federal  
Savings and Loan Association.*



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FOR THE NINTH CIRCUIT

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HOME LOAN BANK BOARD, FEDERAL SAVINGS AND LOAN  
INSURANCE CORPORATION, *et al.*,

*Appellants,*

*vs.*

MALLONEE, *et al.*, SHAREHOLDERS PROTECTIVE COMMITTEE  
OF LONG BEACH ASSOCIATION, LONG BEACH FEDERAL  
SAVINGS AND LOAN ASSOCIATION, TITLE SERVICE COM-  
PANY, *et al.*,

*Appellees.*

---

FEDERAL HOME LOAN BANK OF SAN FRANCISCO, FAHEY,  
*et al.*,

*Appellants,*

*vs.*

FEDERAL HOME LOAN BANK OF LOS ANGELES, *et al.*,

*Appellees.*

---

Brief for Appellee Long Beach Federal Savings and  
Loan Association, Third-Party Plaintiff and Cross-  
Claimant Below.

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## DESCRIPTION OF LITIGATION.

This litigation has thus far involved fifteen (15) proceedings in state and federal trial and appellate courts and two Congressional Investigations. Such proceedings are:

IN THE UNITED STATES DISTRICT COURT, SOUTH-  
ERN DISTRICT OF CALIFORNIA.

- (1) No. 5421-P. H., commenced May 27, 1946.
- (2) No. 5678-P. H., commenced August 22, 1946.
- (3) No. 7989-P. H., commenced February 17, 1948.



IN THE UNITED STATES DISTRICT COURT, NORTH-  
ERN DISTRICT OF CALIFORNIA.

(4) No. 28203-G, commenced July 22, 1948.

IN THE SUPERIOR COURT OF THE STATE OF CALI-  
FORNIA IN AND FOR THE COUNTY OF LOS  
ANGELES.

(5) No. L. B.-C. 14492, commenced January 16, 1948.

All of the foregoing are either consolidated into, or  
enjoined by, the main actions Nos. 5421-P. H. and 5678-  
P. H., in the Southern District Court.

IN THE UNITED STATES SUPREME COURT.

(6) *Fahey, et al., v. Mallonee, et al.*, 332 U. S. 245,  
91 L. Ed. 2030, decided June 23, 1947.

(7) *Ex parte Fahey*, 332 U. S. 258, 91 L. Ed. 2041  
(a writ of prohibition, mandamus and/or injunction  
against United States District Judge Peirson M. Hall,  
denied in June, 1947).

IN THE UNITED STATES COURT OF APPEALS FOR  
THE NINTH CIRCUIT.

(8) *Ammann, et al. v. Mallonee, et al.*, No. 11751, dis-  
missed February 6, 1948.

(9) *Fahey, et al. v. Mallonee, et al.*, No. 11867, dis-  
missed February 25, 1948.

(10) FAHEY, ET AL. V. MALLONEE, ET AL., No. 12511,  
ONE OF FOUR APPEALS PRESENTLY PENDING BEFORE  
THIS HONORABLE COURT OF APPEALS, THE RECORD ON  
WHICH SINGLE APPEAL COMPRISES TWENTY-FOUR (24)  
VOLUMES OF OVER ELEVEN THOUSAND (11,000) PRINTED  
PAGES.



(11) Petition by Fahey, *et al.*, for writ of prohibition, mandamus or other appropriate writ, v. United States District Judge Peirson M. Hall. Petition presented February, 1950, denied June 1, 1950. (No number assigned.)

(12) Petition by Federal Home Loan Bank of San Francisco, *et al.*, for writ of prohibition, mandamus or other appropriate writ v. United States District Judge Peirson M. Hall. Petition presented February, 1950, denied June 1, 1950. (No number assigned.)

(13) Fahey, *et al.*, v. Ronald Walker, Special Master of the United States District Court, No. 12575, presently pending appeal from order allowing fees to Special Master, taken May 3-5, 1950.

(14) Fahey, *et al.*, v. O'Melveny & Myers, *et al.*, No. 12591, presently pending appeal from order allowing attorneys' fees, taken June 20, 1950.

(15) Fahey, *et al.*, v. Ronald Walker, Special Master of the United States District Court, presently pending appeals from order allowing fees to Special Master, taken about November 28, 1950 and December 8, 1950.

### CONGRESSIONAL INVESTIGATIONS.

(1) Tenth Intermediate Report of the Select Committee to Investigate Executive Agencies, Seventy-ninth Congress, Second Session, Investigation of Federal Home Loan Bank Administration, dated July 25, 1946. [R. 9107-9191.]

(2) 1950 Investigation by Holifield's Special Subcommittee of the Committee on Expenditures in the Executive Departments Investigation of Home Loan Bank Board, conducting its investigation into the failure of the Home Loan Bank Board Administration and Federal Home Loan

Bank of San Francisco, *et al.*, to carry out the recommendations of the Select Committee to Investigate Executive Agencies, House of Representatives, 79th Congress, made in July of 1946. Said Investigation is now in recess and scheduled to reconvene early in 1951.

Plate No. 1 are photographs of the Association's offices during run of withdrawals of approximately \$10,000,000 which occurred on appellant's first seizure of the Long Beach Federal Savings and Loan Association in May of 1946.

Plate No. 2 is a graphic picturization by chart of the growth of the Association prior to the run, the extent of the run of withdrawals, and the rebuilding of the Association after its founding management was restored in January of 1948 by a final judgment of the District Court.

Plate No. 3 is a photograph of part of the files found by the trial court, in single copies, to weigh in excess of 150 pounds as of March, 1949, TWO YEARS AGO when only about 9,000 of the 19,000 pages of clerk's transcript had been filed.

The clerk's pagination of the records transmitted to the Court of Appeals includes 19,142 typed pages, EXCLUSIVE OF REPORTER'S TRANSCRIPTS, which exceed 5,000 additional pages.

Appellants, at this stage of the proceedings, by this appeal, seek dismissal and nullification of all of the above listed matters, all because of alleged lack of jurisdiction of the District Court.

Plate No. 1







Plate No. 1







Plate No. 1





Plate No. 1







LONG BEACH FEDERAL SAVINGS AND LOAN ASSOCIATION  
JANUARY 1, 1945 TO JULY 15, 1949

# SHARE ACCOUNTS

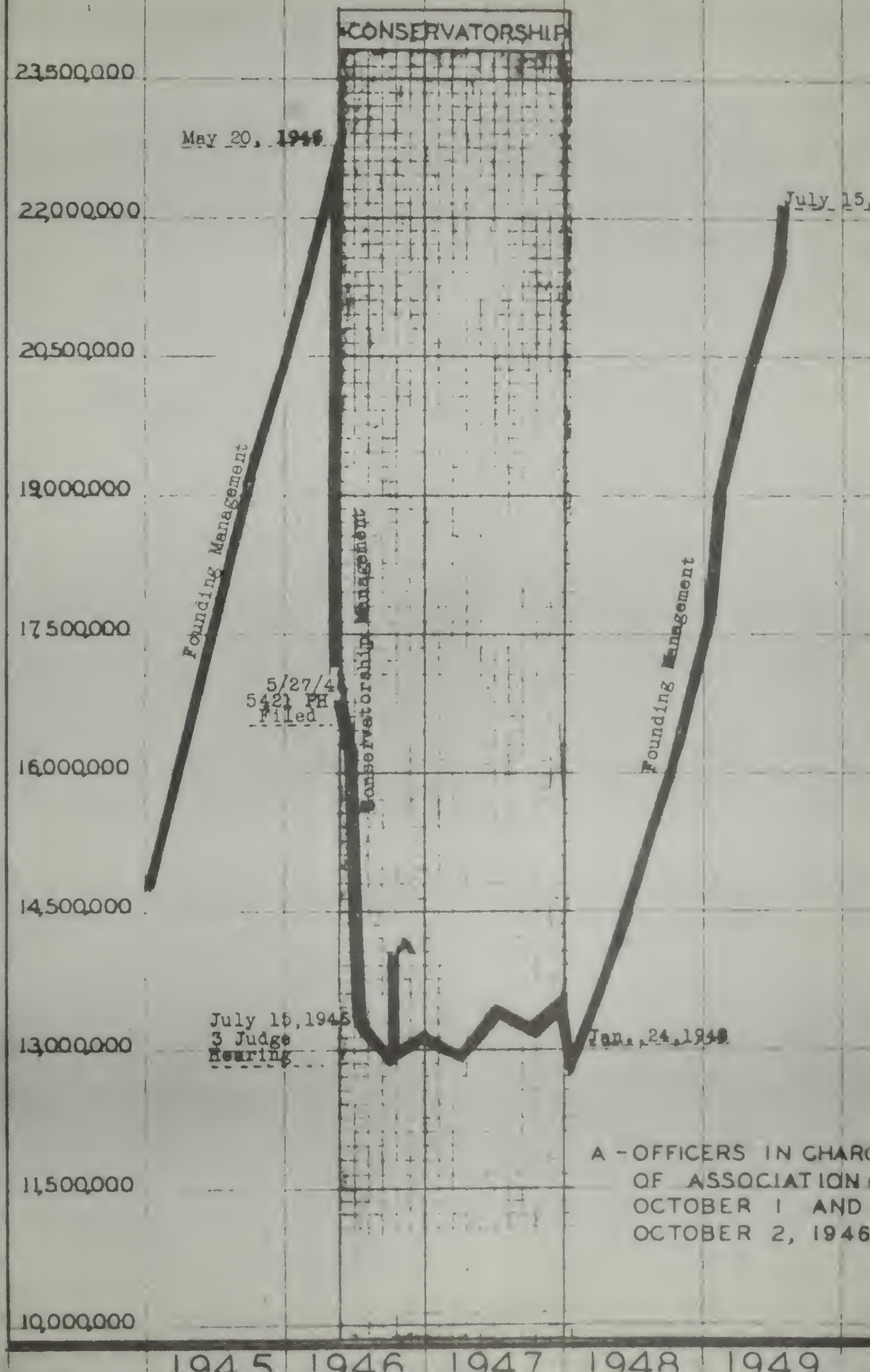




Plate No. 3







## JURISDICTIONAL STATEMENT.

Jurisdiction in the Court below of the litigation is claimed by appellees (plaintiffs and cross-claimants below) to exist under many United States Statutes.

Essentially, these are actions for the recovery of physical possession of, for quieting title to and to determine ownership of approximately \$150,000,000.00 of real and personal property, all physically located within the District of the Court below.

In addition, the actions seek to remove clouds, liens and encumbrances upon the title and ownership of such real and personal property. The action is stated in the jurisdictional paragraphs of the various complaints, cross-claims, third party complaints and similar documents to arise under the following:

1. UNDER SECTION 118 OF TITLE 28, U. S. C. A.  
as it existed at the commencement of the litigation in 1946 and as re-enacted in 1948 into Section 1655 of New Title 28.

2. IN INTERPLEADER UNDER:

(a) Title 28, Section 41, subdivision 26, U. S. C. A., as it existed at the commencement of this litigation in 1946, and as presently amended in Title 28, Sections 1335, 1397 and 2361;

(b) Interpleader under Rule 22 F. R. C. P. as it existed in 1946, at the time of the commencement of the action, and as presently amended;

(c) The inherent equity interpleader under bills in interpleader and bills in the nature of interpleader under jurisdiction of federal courts at the time of their creation under the U. S. Constitution upon the founding of the nation.

3. UNDER THE ADMINISTRATIVE PROCEDURE ACT, U. S. C. A., Title 5, Sections 1001 to 1011, Public Law 404, 79th Congress, Chapter 324, Second Session; and particularly Section 1009 U. S. C. (Section 10 of said Act), which provides in part as follows:

“Section 10(A) Right of Court Review.

“Any person suffering legal wrong because of any agency action, or adversely affected or aggrieved by such action within the meaning of any relevant statute, shall be entitled to judicial review thereof.”

4. BY GENERAL APPEARANCE AND CONFESSION OF JUDGMENT by appellants before the Court below through their certified resolution ordered by them to be filed with the Court. [Ftn. 7, R. 8231-8232.]

5. BY AFFIRMATIVE RELIEF asked by appellants and received from the Court below. [R. 3404, 4613, 10303-10334.]

6. BY APPELLANTS DOING BUSINESS in California under the provisions of Section 1391, Title 28, U. S. C. and related enactments.

### Diversity of Citizenship.

Diversity of citizenship is likewise grounds for exercise of the said jurisdiction of the court below.

Original plaintiffs Mallonee, Newhouse and Bucklin were alleged to be citizens of California, suing on behalf of the 16,000 shareholder depositors of the seized Association. [R. 509.]

Original defendants Fahey, Ammann, and Fahey's successor defendants Divers, Adams, and LaRoque, are all admittedly citizens of states other than California, Fahey being a resident of Massachusetts, Ammann of Maryland, Divers of Ohio, Adams of New Jersey, and LaRoque of North Carolina. [R. 4812.]

The requirement that the amount involved be in excess of \$3,000.00 does not seem to require comment!

### Federal Questions.

Federal questions involved are the constitutional interpretation, application, and effect of:

(1) The Federal Home Loan Bank Act, 47 Stat. 725, 50 U. S. C., App. 601, under which defendants Federal Home Loan Banks of San Francisco, Portland and Los Angeles, were organized and exist, and the ownership of the over \$120,000,000.00 of their assets, involved in this litigation.

(2) The Home Owners Loan Act of 1933, 48 Stat. 128, 12 U. S. C. 1461, et seq., under which appellee Long Beach Federal Savings and Loan Association was organized and exists, and upon the application, interpretation and effect of which ownership, of its more than \$26,000,000.00 in assets involved in this litigation, is to be determined.

(3) The National Housing Act, 48 Stat. 1246, 12 U. S. C. 1724, et seq., under which defendants Federal Savings and Loan Insurance Corporation was organized and exists, and upon the application, interpretation, and effect, of which its liabilities in said litigation, alleged to exceed \$20,000,000.00, are to be determined.

The jurisdictional paragraphs of the various complaints, cross-claims, third party complaints, and other pleadings, contain references to many additional Acts of Congress, sections of the United States Constitution, Regulations, purportedly adopted under one or more of said Acts of Congress, and other sources of federal questions. However, we feel sufficient has been here stated to show jurisdiction over federal questions in addition to diversity of citizenship. Further complete treatment of jurisdiction will be found under appropriate headings of this brief.

### **Jurisdiction of This Honorable Court of Appeals.**

A sharp difference exists between appellants and appellees as to the proper scope of the review under this appeal from a preliminary injunction. Appellants contend the Court of Appeals should review all proceedings in the five years of prior litigation while appellees contend that only abuse of discretion by the court below in granting the preliminary injunction is the proper subject of inquiry in this appeal.



## PARTIES TO THE LITIGATION.

There are more than 400 different parties to the several actions in the District Courts. [R. 8270.] In addition there are numerous class actions; among them:

(a) Appellees original plaintiffs Shareholders Protective Committee, representing the 16,000 depositors of the Long Beach Association, seeking to recover its \$26,000,000.00 in seized assets and accounting therefor. [R. 8273-8274.]

(b) Appellees six association plaintiffs in the Los Angeles Bank action, representing the 172 association stockholders of the seized Los Angeles Bank, seeking to recover its \$46,000,000.00 in seized assets. [R. 9465-9501.]

(c) Appellees Long Beach Association (whose \$26,000,000.00 in assets were seized by certain of appellants and restored by order of the court below), acting on behalf of all of the 300 or more of the class of stockholders of appellant San Francisco Bank, seeking dissolution of such bank by the action of a majority of the voting power of the stock of such San Francisco Bank. [R. 4553.]

(d) Appellee Title Service Company, as trustee for the 8,000 borrowers from the Long Beach Association, seeking to clear the titles to their homes clouded and encumbered by the seizures and confiscations by appellants of the \$46,000,000.00 Los Angeles Bank and the \$26,000,000.00 Long Beach Association. [R. 2683.]



(e) Almost two years after the filing of the first class action and just one day before the removal of the conservator, Newendorp and Bradley filed a new class action in the Los Angeles County Superior Court, seeking to prevent the removal of the conservator and to make restoration of the founding management impossible. [R. 8385-8389.]

(f) July 22, 1948, ten associations in the San Francisco Bay Area referred to as the “Northern Ten,” one day before a meeting of the Board of Directors of the San Francisco Bank, which meeting was attended by members of the Home Loan Bank Board for the purpose of taking action to compromise the entire litigation, sued the officers and directors of the San Francisco Bank to enjoin and prevent such settlement. The action was filed in the Northern United States District Court at San Francisco, California. (None of these 10 associations are parties to this appeal.) [R. 8365-8375.]

This explanation of parties is made to shorten reference necessary throughout the briefs.

PARTIES TO THIS APPEAL.

OF THE MORE THAN 400 PARTIES, MANY IN CLASS ACTIONS, ALL AFFECTED AND BOUND BY THE PRELIMINARY INJUNCTION—ONLY A FEW HAVE TAKEN THIS APPEAL.

Appellants are:

Appellants Home Loan Bank Board and the individual members, Divers, Adams and LaRoque, and their agents and subordinates, Fahey, Ammann, and Bramley, who threaten the second seizure of the Long Beach Association. [R. 8269.]

Appellant Federal Savings and Loan Insurance Corporation, sue or be sued corporation, created by Act of Congress, is simply appellants Divers, Adams and LaRoque, in another capacity, as they are its sole governing authority, its trustees under the terms of the Act. [R. 8269, Finding 55.]

Appellant John H. Fahey, was the one man Home Loan Bank Board at the time of the original seizures and confiscations. [R. 3193.]

In summation, the parties appellant are Home Loan Bank Board, its members and agents, its *alter ego*, Federal Savings and Loan Insurance Corporation, and San Francisco Bank. [R. 8269-8270.] The purpose of their appeals is hereinafter discussed under that heading. All appellants have either made general appearances or were served within the jurisdiction of the court below. [R. 8284, 8301-8302.]

## STATEMENT OF THE CASE.

### SEIZURES AND CONFISCATIONS WHICH CAUSED THE LITIGATION.

#### LOS ANGELES BANK SEIZURE.

On March 29, 1946, there existed at Los Angeles, California, the Federal Home Loan Bank of Los Angeles. The Bank had been founded in 1932 with an initial capital of \$10,000,000.00 [R. 4559] and in fourteen years had grown to \$46,000,000.00. Its assets approximated \$46,000,000.00. [R. 3198.] It was completely solvent, prosperous and growing. Its surplus was approximately \$1,900,000.00. It had never been accused of misconduct or wrong-doing of any nature. It had been examined by appellants on March 15, 1946 (just two weeks prior to its seizure). The examination contained no criticism whatsoever, nor did it mention any matters requiring correction.

On the forenoon of March 29, 1946, a seizing party, consisting of appellant Ammann, defendant Johnson (the then President of appellant Federal Home Loan Bank of Portland, and other henchmen of appellants), entered the premises of the Los Angeles Bank and seized possession of the Bank and all of its assets. [R. 9107-9191.]

As authority for such seizure, they produced Orders Nos. 5082, 5083 and 5084 [R. 8225-8228] of the Federal Home Loan Bank Administration, CERTIFIED TO BY APPELLANT AMMANN. [R. 8228.] By the terms of these orders the solvent, prosperous and growing Los Angeles Bank was, without notice, hearing, trial, or accusation, liquidated, dissolved and merged, instantaneously and summarily, as of the moment of the service of the seizure



orders. Its \$46,000,000.00 in assets were purportedly transferred to the \$9,000,000.00 Portland Bank, whose President was then present and received possession of the seized \$46,000,000.00. [R. 8225.]

Appellant San Francisco Bank is the creature of these seizures. Its existence, if any, arose from the “merger” of the Los Angeles Bank into the Portland Bank, the result of which was the purported San Francisco Bank.

The Los Angeles Bank had approximately 172 stockholders [R. 4559], among them the appellant Long Beach Association, which owned Los Angeles Bank stock of a par value of \$340,000.00 and an actual value of approximately \$400,000.00. [R. 3248.] The Los Angeles Bank held for safekeeping (and for no other purpose) \$8,300,000.00 of U. S. Government Bonds owned by, and the property of, appellee Long Beach Association. [R. 8402.] The President of appellee Long Beach Association T. A. Gregory, was one of the directors of the Los Angeles Bank. He spearheaded the fight for the return of the seized Los Angeles Bank. [R. 4566.]

A committee of the stockholders of the seized Los Angeles Bank was formed. It sought a Congressional Investigation of the confiscation and seizure, retained counsel, and commenced preparation of legal proceedings to recover the \$46,000,000.00 of seized Los Angeles Bank assets. [R. 4566.]

#### LONG BEACH ASSOCIATION SEIZURE.

Appellee Long Beach Association had been founded in 1934 with an initial capital of \$7,500.00. In twelve years, it had grown to have \$26,000,000.00 in assets and a surplus, reserves and undivided profits of approximately

\$1,300,000.00. It had 16,000 depositors and approximately 8,000 borrowers. [R. 3195.] In the last month before its seizure, it had grown approximately \$500,000.00 in new deposits. [R. 3218.]

On May 20, 1946, just fifty-five days after the seizure, confiscation and destruction of appellee Los Angeles Bank, appellee Long Beach Association was similarly without notice, hearing, or trial seized and its confiscation attempted. Appellant Ammann, again with a swarm of henchmen, entered the offices of the Long Beach Association and presented a plain, uncertified, unsigned, typed copy of Order No. 5254, purporting to appoint appellant Ammann as conservator for the Long Beach Association. [R. 8229.]

The President of the Long Beach Association at first refused to surrender the \$26,000,000.00 in cash, bonds, and negotiable securities, whereupon appellant Ammann signed his own name, certifying to the order appointing himself as conservator for the institution. Ammann threatened criminal prosecution for violation of the laws of the United States unless possession of the Association was immediately surrendered. The order bore no seal, and its only authentication was appellant Ammann's signature. [R. 8229-8230.]

The Association's President demanded receipts or acknowledgments for the \$26,000,000.00 in cash, government bonds, and negotiable securities thus seized. Receipts were summarily refused and were never given. [R. 208, 8279.]

Approximately five months later, after repeated demands by the Shareholders Protective Committee, pur-



ported inventories of the assets of the Association were furnished by appellant Ammann. [R. 8678.]

The order, signed by Ammann appointing himself as conservator of the Association, contained no factual charges of any kind. It merely stated that the institution, which had grown from \$7,500.00 to \$26,000,000.00 under the founding management from which it was seized, had been “mismanaged” was “unfit,” “unsafe,” “jeopardizing the public,” etc. [R. 8229.]

Newspaper publicity followed the seizure upon these charges. Appellant Ammann mailed a statement of the charges to all of the 16,000 depositors. A run of withdrawals of multi-million dollar proportions immediately ensued. The run aggregated \$10,000,000.00 of deposits in the Association at the time of the seizure. [R. 8249.]

A Shareholders Protective Committee was formed (appellees Mallonee, *et al.*) and it, on May 27, 1946, one week after the seizure, brought the first of the fifteen court proceedings, itemized under Description of the Litigation.<sup>1</sup> The action was a class action on behalf of all of the 16,000 shareholders, and was *in rem* for the return of the seized \$26,000,000.00 of assets, the restoration of the Association to its founding management, for an accounting and for other relief. The Association was threatened with a merger, liquidation and dissolution similar to that

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<sup>1</sup>This and the 1946 class action by the stockholders of the seized Los Angeles Bank are the only actions by the appellees. The other 13 were brought by appellants or defendants.

which had engulfed the Los Angeles Bank less than about seven weeks before. [R. 2355.]

The Shareholders Protective Committee sought, and obtained from the court below, a Temporary Restraining Order against merger, commingling, or transfer of the Association's assets. The order was served upon appellant Ammann immediately after its issuance on May 27, 1946. This restraining order was flouted and ignored by all appellants, as is disclosed by the attempted accounting of Ammann and objections thereto. [R. 8614-8742. Because appellants desired to amend and supplement their accounting, it was returned without being printed from the Clerk of the Court of Appeals to the Clerk of the District Court, so as to be available for proceedings.]

Notwithstanding the restraining order, \$12,000,000.00 of Association's deeds of trust (nearly one-half of all of the \$26,000,000.00 in assets of the Association), were assigned by appellant Ammann to appellant San Francisco Bank. [R. 8656.] This is one of the assignments which appellants claim cannot be the subject of any court proceeding or review.

The officers of the Association, seeking to ascertain what, if any grounds, were alleged to justify the summary seizure of their \$26,000,000.00 Association, demanded a "More Definite Statement" of the causes of seizure and an administrative hearing before appellant Fahey, as provided in the then regulations of appellants. [Ftn. 4, R. 8218.]

## FIRST CONGRESSIONAL INVESTIGATION.

Congressional action which had been lagging, was spurred by the second seizure and confiscation. In June 1946, the Special Committee to Investigate Executive Agencies of the Seventy-ninth Congress, Second Session, commenced its hearings. The unanimous report of the Congressional Investigating Committee condemned both seizures and confiscations, recommended immediate restoration of the Los Angeles Bank and the removal of appellant Ammann as conservator for the Long Beach Association. [R. 9107-9191.]

## THREE JUDGE COURT.

The Shareholders Protective Committee's court action had attacked the confiscation of the Long Beach Association as unconstitutional, and sought an injunction preventing appellant Ammann continuing as conservator, it therefore required the convening of a statutory three-judge court. [R. 362-377.]

The Court met at Los Angeles and consisted of Honorable William E. Orr, Circuit Judge, Honorable Peirson M. Hall and Honorable Dave W. Ling, District Judges. The hearing continued over July 15 and 16, 1946. [R. 512-519.] In September 1946, the three-judge court announced its unanimous opinion that the Act of Congress, claimed to authorize Ammann's seizure of the Long Beach Association was unconstitutional. [R. 599-605.]

Appellants immediately appealed this decision to the United States Supreme Court. They applied *ex parte* for a stay order before Justice Rutledge of the Supreme Court, and enforcement of the Order of the three-judge court, which was already executed by removal of appellant Ammann, was stayed. [R. 762-763.]



Upon receipt of the Supreme Court stay order, Ammann resumed possession of the Association's business and affairs and continued in such possession. [R. 793-794.]

In January, 1948, after further proceedings, an order of the District Court at Los Angeles removed Ammann as conservator and restored the Association to its founding management. [R. 8310-8327.]

The Congressional Investigating Committee report was ignored by appellants, until in July of 1947, the Federal Home Loan Bank Administration was reorganized. The one-man commissioner, appellant Fahey (who had replaced the five-man board created by the original Federal Home Loan Bank Act of 1932), was now replaced by a three-man Home Loan Bank Board. [R. 2541-2551, 2771-2772, 2778.]

The three-man Home Loan Bank Board which replaced appellant Fahey, as one-man commissioner, consisted of Fahey, as Chairman and two new board members. The terms of the original Federal Home Loan Bank Act had required a bi-partisan board of five members, not more than three of which could be members of one political party. (Federal Home Loan Bank Act, 47 Stat. 725; 12 U. S. C. 1421, 15 U. S. C. 602.) The new three-man board was required to have at least one member of the minority party as a board member. (Reorganization Plan No. 3 of 1947, 12 F. R. 4981.)

## ADMINISTRATIVE HEARINGS.

In May of 1946, immediately after the seizure of the Association, the Association's officers had requested an administrative hearing before appellant Fahey and such hearing was set for July 3, 1946, in Los Angeles. [R. 144-147.] In the meantime, the First Congressional Investigating Committee had conducted its hearings, at which hearing, appellants Fahey and Ammann had both testified at length. Harold Lee, then governor of the Federal Home Loan Bank Administration, had also testified. The testimony of appellants and their subordinates was clear. The substance of their testimony was that under no circumstances would they ever return the Association to its founding officers and directors. [R. 193.]

On March 25, 1946, just one day before the seizure of the Los Angeles Bank, appellant Fahey adopted a resolution that neither he, nor any of his subordinates should be thereafter subject to the subpoena power (*duces tecum* or otherwise) of any court, state or federal. [R. 9498-9501.]

Appellees Shareholders Protective Committee, claiming that the Act of Congress under which Ammann was appointed was unconstitutional [R. 362-371], applied for and obtained a temporary restraining order against the administrative hearing being held prior to the consideration by the three-judge court at Los Angeles, of the constitutionality of the Act of Congress. [R. 372-377.] The three-judge court, after hearings, decided that the act was unconstitutional and ordered removal of Ammann as conservator. It also enjoined the administrative hearing called under the unconstitutional act of Congress. [R. 599-605, 743-758.]



In reversing this judgment, the United States Supreme Court approved either or both administrative hearings or Court proceedings, to inquire into the merits of the claims of mismanagement made by appellants as grounds for the seizure and the charges made by appellees Shareholders Protective Committee, *et al.*, that fraud and malice were the causes of the unjustified seizures. [*Fahey, et al. v. Mallonee, et al.*, 332 U. S. 245, 91 L. Ed. 2030 (June 23, 1947).] After the Supreme Court remand, the administrative hearing originally requested by the officers was reset for December 15, 1947, at Los Angeles. [R. 8230.] The Shareholders Protective Committee and the Association protested against the administrative hearing, interfering with issues pending before the Court for decision. [R. 2914-2944, 8230-8231.] The protests were heeded and the new three-man Home Loan Bank Board by a two to one vote vacated the administrative hearing set for Los Angeles, California. The one-man voting for the administrative hearing was appellant Fahey. Within a few days thereafter, he was no longer a member of the Home Loan Bank Board, the President of the United States failing to nominate him for this position upon the adjournment of the 79th Congress.

#### RESCINDING OF APPOINTMENT OF CONSERVATOR.

In January of 1948, there was a vacancy in the three-man Home Loan Bank Board. The board now consisted of appellant Divers, the latest nominee of the President, as Chairman, and appellant Adams, who had again been nominated as a board member. On January 17, 1948, the two member Home Loan Bank Board unanimously adopted its Order No. 388 [Ftn. 7, R. 8231-8233], which among other things, rescinded the appointment of appel-

lant Ammann as conservator, required him to account with the court below for the \$26,000,000.00 of Association assets which he had seized without a receipt in 1946. The order, by its terms, required that a certified copy of such resolution be FORTHWITH filed with the District Court at Los Angeles. [Ftn. 7, R. 8231.]

Upon filing of the order with the Court, the Shareholders Protective Committee presented a petition to the Court for a Court Order; removing appellant Ammann as conservator, requiring him to account and to otherwise carry out the terms of Order No. 388. [R. 3409-3420.]

#### **GENERAL APPEARANCE BY APPELLANTS.**

The Court below has found that the filing of Order No. 388 with the Clerk of the Court was a general appearance by appellants Home Loan Bank Board before the Court below. [Finding 77, R. 8283-8284, Conclusion 16, R. 8301-8302.] Appellants Home Loan Bank Board, Ammann and others, were represented at the hearing before the District Court upon the removal of Ammann as conservator. [R. 10306-10307, 10333.]

Although Order No. 388 is completely silent on the question of any election of officers prior to removal of Ammann as conservator, appellants Home Loan Bank Board caused a telegram to be read to the District Court in which they claimed the order was not completely effective until an election of officers and directors had been held. [R. 10311-10314.]

They likewise requested the District Court to require a \$1,000,000.00 surety bond of the officers and directors upon their restoration. **The District Court granted**

the relief requested by appellants, the million dollar surety bond was furnished, and is yet on file with the District Court in full force and effect, and an election was held. [R. 8318, 10333-10334.]

#### APPOINTMENT OF SPECIAL MASTER.

The District Court also granted the Home Loan Bank Board's request for an election of directors but instead of holding the election prior to the removal of Ammann as conservator, the Court appointed its special master to conduct a Court supervised election of directors by all the shareholders of the Association. [R. 8326, 10328.] The special master was likewise ordered to supervise the return by appellant Ammann of the seized assets, books and records of the Association to the founding officers and directors. [R. 8324-8325.]

The special master selected by the Court was Ronald Walker, Assistant United States Attorney, one of the attorneys for appellants Home Loan Bank Board and Ammann Throughout the first twenty months of the litigation. [R. 9107-9191.]

All parties including the Association and the Shareholders Committee consented to Assistant United States Attorney Walker taking a leave of absence from the United States Attorney's office to act as the Court's Special Master, in conducting the election of directors by the shareholders of the Association and in supervising the return of the seized assets, books, etc. [R. 10326.]

The consent of appellants Home Loan Bank Board, Ammann, *et al.*, to the order appointing their attorney Ronald Walker as Special Master, was signed by the other attorneys for such appellants without reservation,



special appearance, or any objection to the jurisdiction. Such signature being by Honorable James M. Carter, then U. S. Attorney and now District Judge, and “Principal Attorney” William F. McKenna. [R. 9107-9191.]

The election requested by appellants was held by the former United States Attorney (now Special Master) and resulted in the unanimous re-election of the entire board of directors without a single dissenting vote. [R. 6119-6120.]

#### CALIFORNIA STATE COURT ACTION.

On January 16th, just one day before appellants Home Loan Bank Board adopted their Order No. 388, rescinding the appointment of Ammann as conservator and making their general appearance before the District Court, Newendorp and Bradley, two depositors of the Association (whose combined deposits aggregate less than \$2,000.00) [R. 3946-3947], filed a complaint in the State Superior Court for Los Angeles County against: (1) the Association, (2) its officers and directors, (3) some of its principal customers, (4) Title Service Company, trustee on the Associations deeds of trust, (5) the Association's former attorney, and (6) various others. [R. 9585-9644.] The complaint asked approximately \$2,000,000.00 in damages for alleged mismanagement and misconduct of the founding officers and directors [R. 9636-9638], prior to the appointment of Ammann as conservator and was filed to make impossible the restora-

tion of the Association to its founding management. [R. 9585-9644.]

Newendorp and Bradley claiming to sue on behalf of all of the 16,000 depositors of the Association to prevent Ammann's removal were directly conflicting with the *Mallonee* case brought twenty months previously in the Federal Court by the Shareholders Protective Committee, duly licensed as such by the State of California. [R. 8377-8398.] The Newendorp and Bradley action was therefore removed to the Federal Courts and Newendorp and Bradley named as defendants in the *Mallonee* action. [R. 3459-3460.] Newendorp and Bradley defaulted to the complaint in the *Mallonee* action and did not present any of their charges to the Federal Court. [R. 3623-3624.]

They had sought in the state court proceedings to obtain a receivership for the Hotel building in which the Association conducted its business and which was owned by the Association. [R. 9697-9700.] Their charges were so identical with the charges put forth by appellants Ammann, Fahey, *et al.*, in the "More Definite Statement," that the District Court enjoined prosecution of the state court action except that any issues therein raised might be presented to the Federal Court in the pending *Mallonee* case, the original class action on behalf of all of the 16,000 depositors. [R. 10100-10121.] This injunction although preliminary, has never been appealed from and Newendorp and Bradley have never presented any of their charges to the District Court for Consideration.



\$14,000,000.00 DEPOSIT IN COURT.

Upon the return of the Association to its founding management (under order of the District Court) they found that appellant Ammann had (1) transferred to appellant San Francisco Bank almost all of the Association's \$12,000,000.00 of Deeds of Trust, (2) had pledged more than \$5,000,000.00 of the Association's Government Bonds to the San Francisco Bank, and (3) that there were \$400,000.00 of outstanding loan commitments made by appellant Ammann and not disclosed on the Association's books. [R. 8637, Ftn. 9, R. 8238.]

Appellant San Francisco Bank claimed to hold all of such deeds of trust and Government Bonds as assignee of appellant Ammann, notwithstanding the restraining order by the Court below, preventing appellant Ammann from transferring such assets and notwithstanding the recorded *Lis Pendens* describing each of such deeds of trust. [R. 3690-3704.]

The assignments of the notes and deeds of trust as signed by Ammann on the back of said notes, was by undated rubber stamp, therefore the actual date of the transfers was difficult to establish. [R. 9107-9191.]

However, the San Francisco Bank held almost \$14,000,000.00 of Long Beach Association assets, possession and title to which it had acquired from appellant Ammann. It claimed to hold them as security for an obligation created by appellant Ammann in the amount of \$6,300,000.00. [R. 3690-3704.] There was thus an excess collateral of approximately \$8,000,000.00. [R. 3707.] The \$6,300,000.00 obligation claimed by the San Francisco Bank against the Long Beach Association arose from the transfer by the San Francisco Bank to appellant Ammann of approximately \$7,300,000.00 of seized Los

Angeles Bank assets obtained by appellant San Francisco Bank when Ammann and the President of the Portland Bank seized the Los Angeles Bank and all its assets on March 29, 1946. [R. 3708-3709.]

The Los Angeles Bank claimed the loan of \$7,300,000.00 from San Francisco Bank to Ammann was made with the seized assets, as to at least 5/6 or 83% thereof. [R. 3644-3645, 8404.] The San Francisco Bank likewise claimed payment to it of the full amount of Ammann's obligation. [R. 3690-3704, 3707, 8405.] The Long Beach Association denied all liability for Ammann's obligations to the San Francisco Bank except only such benefits, if any, as the Association had received by Ammann's use of the money. [R. 8405-8406.]

The Association in February, 1948, shortly after its restoration, obtained an order to show cause from the District Court, directed to the Portland, San Francisco and Los Angeles Banks, requiring the deposit into the Registry of the Court of all the disputed assets. [R. 3599-3601.] Opposition to such motion was filed and hearings conducted before the District Court. Subpoenas compelled the production by the San Francisco Bank of documentary evidence and testimony by officers of the San Francisco Bank. After such hearings the Court below ordered the deposit into the Registry of the approximately \$14,000,000.00 of notes, trust deeds, government bonds and securities. Appellants San Francisco Bank complied with the requirement of the District Court's order and such deposit was made. [R. 8399-8525.] No appeal was ever taken from such order of deposit. Application to vacate the order of deposit was made by appellants and denied.

## SETTLEMENT NEGOTIATIONS.

Immediately after the removal of Ammann as conservator, negotiations to compromise the entire litigation and for restoration of the seized Los Angeles Bank were commenced by the appellants, appellees and all interested parties. [R. 7425-7429.] These negotiations had progressed to the point where the Board of Directors of appellant San Francisco Bank was about to consider at its meeting in Missoula, Montana, on July 23, 1948, a compromise of this entire litigation. [R. 5385.] This meeting was attended by a member of the Home Loan Bank Board, and various other representatives of appellants.

Just one day before the meeting, ten Northern Associations situated in the San Francisco Bay Area, filed Action No. 28203-G in the Northern United States District Court at San Francisco and obtained an order to show cause returnable August 9, 1948, seeking to prevent the Board of Directors of the San Francisco Bank from compromising the pending litigation. [R. 4641-4659.]

The ten Northern Associations and all 300 of the Members of the purported San Francisco Bank had about only a few days previously been served by an Order to Show Cause issued by the District Court at Los Angeles, looking towards dissolution of the San Francisco Bank by vote of a majority of the voting power of the stockholders of such bank. [R. 4593-4597.] The Order to Show Cause was based upon a motion filed by the restored Long Beach Association on behalf of all of the stockholders of the San Francisco, Portland or Los Angeles Banks (whichever existed) for dissolution of the San Francisco Bank and the restoration of the Portland and Los Angeles Banks upon vote of the majority of the voting



power of the stockholders of any and all of such banks. [R. 4552-4586.]

Further prosecution of the Northern Ten Action in the District Court at San Francisco was enjoined by a preliminary injunction issued by the District Court at Los Angeles on the grounds, among others, that: (1) all of the issues raised by the Northern District Court action were already pending and had been pending for more than two years in the Court below; (2) that all of the plaintiffs and defendants in the Northern Ten Action at San Francisco were already parties to the Southern District Court action at Los Angeles. [R. 8362-8376.]

This preliminary injunction pending trial on the merits in the Southern District Court was never appealed from and is still in effect. [R. 8275.]

Settlement negotiations were almost incessant during the entire year of 1948 and so continued through 1949, until October. Only those steps essential to preserve the parties rights and prevent lapse or expiration thereof were taken in the litigation. [R. 8239-8240.]

In December 1948-January 1949, the "Portland Conference" (referred to in various settlement reports) was thought to have settled all phases of the litigation. [Ftn. 10(b), R. 8241.] The parties, under the direction of defendant Harold C. Holmes, deceased, then President of the San Francisco Bank (who announced upon his election that he was to be the last President of the San Francisco Bank and had been elected to complete its dissolution) participated in settlement conferences extending over many weeks. [R. 7445, 7460-7564.]

These settlement conferences were for the preparation of appropriate petitions to embody the terms of compromise and to result in a compromise judgment by the



District Court to terminate the litigation by permanent injunction, restore the Los Angeles Bank, and otherwise implement the various terms of the compromise. [R. 7431.]

#### ATTORNEYS' AND SPECIAL MASTER'S FEES.

Appellants Fahey and Home Loan Bank Board have claimed as part of their supervisory rights, the power to regulate and approve the employment of attorneys and the rates and amounts of compensation of attorneys for Federal Home Loan Banks and Federal Savings and Loan Associations. They assert that attorneys suing the Home Loan Bank Board cannot receive any compensation except such as the Home Loan Bank Board, defendants in the litigation, approves for the plaintiffs' attorneys. [R. 6381-6390, 6527-6566, 10743-10754, reference is also made to Appeal No. 12591, presently pending in this Honorable Court of Appeals and the record thereon.]

When the Los Angeles Bank stockholders were about to sue appellant Fahey for the seizure and confiscation of the Los Angeles Bank, Fahey and Ammann conducted spot checks of the members of the bank, as to who had appropriated how much, to what attorneys. Fahey and Ammann were the defendants who were to be sued by these appropriations. [R. 9323-9327.]

After the confiscation of the Los Angeles Bank and the intimidations of its stockholders by spot checks as to employment of counsel, the directors of the Long Beach Association, anticipating a similar confiscation and de-

struction of their Association, adopted the following resolution [R. 3237-3238]:

“Whereas there have been indications that retaliation against this association by those purported to be representing the Federal supervising authorities because the representatives of this association, duly elected as a director of the Federal Home Loan Bank of Los Angeles, did not disregard the legal rights and best interests of said bank and submit to the dictation of the Federal Home Loan Bank Commissioner; and

“Whereas such retaliations are unwarranted and violate the principles of our democratic government and are detrimental to the best interests of this association: Now, therefore, be it

“*Resolved*, That the officers of this association be and they are hereby authorized to employ legal counsel to conduct appropriate legal proceedings to restrain said Federal Home Loan Bank Commissioner or his deputies from interfering with the normal and proper conduct of this association’s affairs.

“The sum of \$100,000 is hereby appropriated and authorized to be expended for that purpose.”

At the first Congressional Investigation in 1946, Harold Lee, Governor and former Chief Counsel of the Federal Home Loan Bank System, 76 days after the seizure and confiscation of the Los Angeles Bank, and 26 days after the Long Beach Association seizure, testified:

“Mr. Fischbach: Now, what facts did you have before you as an official of the Administration upon which you predicated the determination to appoint a conservator?

“Mr. Lee: . . . as I said before, the principal fact was the appropriation of \$100,000. The other facts were supplemental. That is the principal fact.”

(Reference is made to page 187, Transcript of Special Committee To Investigate Executive Agencies House of Representatives, Seventy-Ninth Congress, Second Session, Pursuant to H. Res. 88, Part 7, Complaints of Federal Home Loan Bank of Los Angeles and Federal Savings and Loan Association of Long Beach Against The Federal Home Loan Bank Administration.)

The “More Definite Statement” [Ftn. 4, R. 8218-8224] sets forth as one of the principal grounds for the seizure of the Long Beach Association, the payment of a \$50,000.00 cashiers’ check in partial fulfillment of said resolution.

Appellants, in their opening brief, on pages 64 and 65, said:

“. . . the Home Loan Bank Administration was authorized and indeed charged with the duty to prevent such disbursement.”

The Association and the Shareholders Committee’s position has been diametrically opposed to appellants on the questions of attorneys’ fees. The \$50,000.00 cashiers’ check was deposited in the Registry of the Federal Court, uncashed and unendorsed, by the Association’s attorney on June 12, 1946. [R. 86-100, 8267-8268.] Not one cent has been paid from Association funds or assets for attorneys’ fees in this litigation, except on order of the District Court.

The Court’s orders have been made upon funds in the Registry of the District Court and paid solely from such funds. The Shareholders Protective Committee and the



Association do not believe that their rights to due process and a fair trial before the Federal Court can be circumvented and prevented under the guise of supervision or regulation by appellants Home Loan Bank Board, Fahey, Ammann, or the San Francisco Bank. [R. 9099.]

No attorney can be expected to vigorously prosecute litigation against defendants who are to regulate what, if any, fees the prosecuting attorney is to receive for his services against those defendants. Appellants' pretenses of supervision and regulation of attorneys' fees were shown to be sham and false, when the District Judge in March of 1947, made an interim allowance on account to the attorney for the Shareholders Protective Committee only. [R. 2350-2363.]

Appellants' response was to make the District Judge a defendant in the U. S. Supreme Court in a petition for a writ of mandamus and/or prohibition and/or injunction. The U. S. Supreme Court rejected appellants' contentions in its opinion in *Ex parte Fahey*, 332 U. S. 258, 91 L. Ed. 2041, wherein it said:

“ . . . an allowance of \$50,000 will hardly wreck a \$26,000,000 institution during the time it would take to prosecute an appeal.”

Notwithstanding the Supreme Court opinion, appellants resisted payment of the \$50,000.00 allowance, and even sought to prevent payment to the Shareholders Protective Committee of \$17,000.00 in Expenses.

According to appellants, the Shareholders Committee, representing the majority of the 16,000 shareholders, couldn't use any of their own money to sue Ammann and remove him as conservator, unless Ammann and his superior, Fahey, “supervised” and “regulated” the amount



of such attorneys' fees and expenses. [Reference is made to Appeal No. 11751, Petition and Motion for Stay of Execution To Prevent Payment of Interim Allowances On Account of Fees and Expenses, which was denied by this Honorable Court of Appeals for the Ninth Circuit on February 25, 1948. See also Rule To Show Cause, and Motion for Leave to File Petition for Writ of Prohibition and/or Injunction, etc., R. 1477-1497.]

After the Supreme Court opinion, stay of the payment of the order for attorneys' fees was denied by the District Court [R. 2464-2478], appellants immediately appealed to this Honorable Court of Appeals for the Ninth Circuit. Hearings on the motion for stay were argued before this Court of Appeals November 10, 1947, during a recess in hearings then proceeding before the District Court. (See Court of Appeals Docket in Appeal No. 11751.)

On December 8, 1947, this Honorable Court of Appeals denied the stay and ordered payment of the interim allowance on account of attorneys' fees and expenses. (See Court of Appeals Docket in Appeal No. 11751.)

For the first time in the litigation, nineteen months after it was commenced, the shareholders, after successfully fighting through the District Court, the U. S. Supreme Court and this Honorable Court of Appeals, were allowed the use of some of their own money to litigate for the recovery of their \$26,000,000.00 in assets.

Ten days later the administrative hearing was indefinitely postponed. [R. 6288.] Forty days later, the appointment of Ammann as conservator was rescinded, and he was required to return the assets of the Association and

to account to the District Court, all by actions and resolutions taken by appellants themselves. [Ftn. 7, R. 8231-8232.]

This Honorable Court of Appeals can draw its own conclusions as to what the appellants thought as to the merits of their charges when they faced a trial before an impartial Federal Court in an action brought by a shareholders committee, now sufficiently financed to try the case.

After the stay of execution was denied by this Honorable Court of Appeals, the appeal on attorneys' fees was still pending. Before preparation of a record on appeal, or any other hearing before this Court of Appeals, appellants dismissed their own appeal to prevent a hearing of such appeal on the merits. [R. 3550-3552.]

During the settlement negotiations appellants had insisted that they must regulate and supervise the amount of attorneys' fees to be paid to the shareholders, association and others' attorneys, who had successfully recovered the seized Association from the appellants' seizure, and prevented its confiscation and destruction. The Shareholders Committee and the Association steadfastly refused to either permit appellants to fix the plaintiffs' attorneys' fees or to themselves fix such fees and be subject to coercion by appellants in so doing.

The matter of attorneys' fees was again submitted to the District Court by motions for allowances of such fees. [R. 6527-6528.] Complete notice to all parties concerned was given. [R. 6528-6533.] Appellants, fearful that the District Court might assess some of these fees against them, insisted upon a stipulation that only one-third of whatever award the District Court made, could be

paid, and that the other two-thirds must be stayed by the District Court, pending completion of settlement or further order of the Court. [R. 6381-6390.]

The attorneys in an effort to facilitate settlement, agreed that the fees which they had earned for services successfully rendered, might be withheld by the District Court. The District Court conducted hearings extending over several days and continuances, heard the testimony of experts, leaders of the bar, including a former State Supreme Court Justice and made its total award of \$540,000.00 to four separate firms of attorneys representing different groups of parties. Appellants immediately objected to the court's determination and threatened to wreck and repudiate the settlement, already agreed upon, unless the attorneys who had successfully sued the appellants, would immediately consent to a vacating and setting aside of the entire award of the Court, and that they be paid nothing for their nearly two years of successful litigation against the appellants. [R. 6381-6390, 6527-6566, 10703-10754.]

Peyton Ford, the Assistant to the then Attorney General of the United States, pledged the word of the Attorney General that settlement negotiations would go forward in good faith [R. 10734], if the attorneys would consent to taking part only of their fees now, and that the balance ( $\frac{2}{3}$ ) might be determined in adversary proceedings either at the conclusion of settlement, or if no settlement resulted, in litigation. [R. 10709-10754.]

This was contained in a letter filed with the Court by Peyton Ford. [R. 6562-6564.]

Again the attorneys, who had recovered the Association from the appellants' seizure and had prevented its confiscation and destruction, acquiesced. There was paid \$163,-



000.00 on account of attorneys' fees, and the balance of the award was vacated by the District Court on consent of the counsel in whose favor the award had been made. [R. 6527-6550.] In so doing the attorneys relied on the assurances of the Attorney General of the United States, through his Special Assistant, Peyton Ford, that the case would thereby be settled and that the District Court would determine in adversary proceedings, not only the amount of fees to be paid to the successful attorneys, but who among the parties, including appellants, should be liable for the payment of such fees. Appellants expressly waived their right of appeal from the order thus paying an additional \$163,000.00. There has thus been paid with the express consent of appellants by waiver of right of appeal or by dismissal of appeal, a total of \$213,000.00 on account of attorneys' fees and approximately \$50,000.00 on account of expenses, a grand total of \$263,000.00. [R. 6547-6550.]

Yet appellants maintain, at pages 64 and 65 of their opening brief in referring to attorneys' fees, "The appropriation or expenditure of corporate funds to defend against such charges was plainly illegal and the Home Loan Bank Administration was authorized and indeed charged with the duty to prevent such disbursement." The \$263,000.00 paid on account completely justifies the necessity of the original appropriation of \$100,000.00 and the issuance of the cashiers' check of \$50,000.00.

In addition, the District Court has allowed to the Special Master, a total of \$60,000.00 on account of Special Masters Fees. [R. 3979-3982, 6420-6426, 8165-8169.] The special master is the former U. S. Attorney who represented appellants in the first twenty months of



the litigation. [R. 10325-10326.] He has ruled against appellants in various matters as Special Master. He also is now a defendant in the litigation. Appellants have appealed from the last two allowances of Special Master fees by the District Court and the Special Master, their own former attorney, is now litigating with his former clients in an effort to keep the fees he has been allowed by the District Court for services as Special Master. (Presently pending appeal No. 12575, taken May 3-5, 1950 and presently pending appeal taken about December, 1950.)

The power to regulate and supervise as claimed by appellants, apparently extends not only to the District Court and to judges and to the Special Master, but to any Court which rules against appellants.

An interesting commentary upon appellants' attitude on attorneys' fees is contained in their statement before the first Congressional Committee:

"Mr. Lee: . . . Now I do want to make clear that we never have questioned and never would question the withdrawal of a fair and reasonable amount, to challenge the authority of the Federal Home Loan Bank Administration. It has been done time and again and can always be done, but to spend hundreds of thousands of dollars out of these mutual institutions out there in this thing, we thought, is going too far." [R. 207.]

The attorneys for the Los Angeles Bank and its stockholders have represented their clients in this litigation for over four years. In April of 1950, the District Court made the first allowances on account of attorneys' fees to these attorneys. Appellants vigorously resisted and

again sought to supervise and regulate the amount of attorneys' fees that the Court could allow to the plaintiffs suing these appellants. (Reference is made to presently pending Appeal No. 12591, taken June 20, 1950.)

The District Court allowed \$75,000.00 on account, of four years of litigation, seeking the return of the \$46,000,000.00 of summarily seized and confiscated assets of the Los Angeles Bank. Yet appellants insisted before the District Court and before this Honorable Court of Appeals in September of 1950, that payment of any sum whatsoever must be stayed. (Reference is made to presently pending appeal No. 12591, taken June 20, 1950.)

On May 10, 1949, the attorneys for the plaintiffs and the Association, in the interest of settlement and to prevent repudiation of settlement, agreed upon and consented to the vacating of the Court's award of fees for their past services. [R. 6381-6390.] By September of 1949, nothing further towards settlement had been accomplished. The Home Loan Bank Board and the Attorney General's Office refused to agree to any terms, unless, notwithstanding their letter filed with the U. S. District Court, and their agreement and stipulation with all counsel that the Court should fix the fees, the Home Loan Bank Board itself, in direct violation of such agreements, could regulate and supervise the amount of attorneys' fees to be paid to the attorneys who had recovered the Long Beach Association from the appellants.

Disgusted with the lack of progress in months and years of settlement negotiations, the Wilmington Association, on September 1, 1949, moved the District Court for an order requiring all parties to report to the District Court on the progress of settlement negotiations and the

points of disagreement, if any. [R. 7193-7196, 8241-8242.] Instead of frankly and fairly reporting to the District Court that the Home Loan Bank Board was again repudiating its agreement that the Courts should determine fees, the Home Loan Bank Board on September 9th, adopted Resolution No. 2015. [Ftn. 11, R. 8242-8247.]

### THE SECOND ATTEMPT TO SEIZE AND CONFISCATE THE LONG BEACH ASSOCIATION.

The motion for report on progress of settlement negotiation was set for hearing on September 12, 1949, before the District Court. [R. 7191-7192.] During the progress of the hearing on that motion, counsel for appellants attempted to read to the Court the text of Resolution No. 2015 requiring the Long Beach Association, "to show cause, if any it have, why the Home Loan Bank Board should not, for the reasons hereinbefore stated, enter its order or orders for such action as it deems necessary or appropriate, including the appointment of the Federal Savings and Loan Insurance Corporation as receiver for said Association." [R. 10787-10798.]

By appellants' regulations, Federal Savings and Loan Insurance Corporation is appointed as receiver only for the purposes of liquidation of the Association. (Title 24, C. F. R., Part 148, Section 148.1(10).)

At later hearings, appellants in responses to the Court's order, reported that no settlement of the litigation was possible, that no settlement had ever been agreed to by them. This of course, is in direct contradiction and conflict with the word of the Attorney General pledged to the Court and counsel when the attorneys who had successfully recovered the Association, consented to the Court



vacating the attorneys' fees awarded them by the Court for such recovery. [R. 7335-7339, 10798-10813.]

Order 2015 contains four grounds or charges upon which the Association was to show cause before Appellants Divers, Adams and LaRoque, why said appellants should not appoint themselves, as trustees of the Federal Savings and Loan Insurance Corporation, as receivers for the liquidation of the Long Beach Association. [Ftn. 11, R. 8242-8247.]

The first of these grounds is that the Long Beach Association "has failed to file the monthly and annual reports required by the Rules and Regulations for the Federal Savings and Loan System;"

Appellant Ammann has not yet completed his accounting to the District Court, and until such accounting is approved by the Court, no reports by the Association were possible. [R. 8277.]

The form of report required a certification under oath by the responsible officers of the Association, that the books and records of the Association, including those kept by appellant Ammann, were true and correct. [R. 8278-8280.]

In their opening brief, appellants on page 112, state glibly that any sort of exception or reservation could have been incorporated in the reports and that the Association should have filed the reports with such exception. This brings us to Ground No. 2 of Order 2015, which is "Said Association has failed and refused to furnish an affidavit of its president or secretary or other officer that, to the best of his knowledge and belief, the books of said Association correctly reflect the financial condition thereof, as required of all Federal savings and loan associations;"



Said Association had furnished such an affidavit to the examiner for appellants approximately three weeks prior to the adoption of Order 2015. The Association had a receipt in the personal handwriting of the chief examiner for such affidavit. [Ftn. 3, R. 8212, 8279-8280.] Notwithstanding this, the Chief Examiner testified at the hearing, that no such receipt had been given by him. [R. 10941-10942.]

The affidavit furnished by the Association contained the exceptions and reservations that the Association only guaranteed the accuracy of the books kept by itself, and that pending the decision of the litigation and the approval of appellant Ammann's accounting by the District Court, no complete financial statement could be made. [Ftn. 3, 11-7-49 No. 2, R. 8210-8211, 8279-8280.]

Notwithstanding the giving of the affidavit with the qualifications, appellants assert that no affidavit was given and therefore a receiver should be appointed for the liquidation of the Association.

Ground No. 3 of appellants' Order No. 2015, states that "Said Association has failed to pay the premiums for insurance of its accounts and the installments thereon due and payable on or about June 5, 1948, December 5, 1948 and June 5, 1949, in the total amount of \$36,487.25, in violation and disregard of the statutes of the United States, the Rules and Regulations for Insurance of Accounts, and its contract with the Federal Savings and Loan Insurance Corporation;".

At the time that this ground for receivership, seizure and liquidation, of the Association was adopted by appellants, the total sum of \$36,487.25 was on deposit in the

Registry of the District Court, in proceedings of which appellants had notice and in which they participated. Their objections and resistance to the deposit in Court of the \$36,487.25 were overruled and disallowed by the District Court. Appellants took no appeal from the order of deposit, but instead sought to appoint themselves receivers for the liquidation of the Association because of non-payment to them of money paid into the U. S. District Court Registry in interpleader, under order of the Court. [R. 8266.]

The Court at the time it allowed the deposit into the Registry of the Court, asked attorneys for plaintiffs if they felt the need of any injunction. Settlement negotiations were yet in progress and attorneys for plaintiffs told the Court they felt no necessity for an injunction at that time. [R. 10773.]

The preliminary injunction attacked on this appeal is to prevent the confiscation and liquidation of the Association because it doesn't pay for the second time to appellants, money it has already paid into the registry of the District Court under an order of the District Court against appellants, which has become final for lack of appeal therefrom.<sup>2</sup>

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<sup>2</sup>The U. S. Supreme Court in *Dugas v. American Surety*, 200 U. S. 414, 81 L. Ed. 727 (1936), in describing a payment into Court similar to that made by the Association in this appeal, said:

"3. In the interpleader suit there was an actual, complete and judicially sanctioned payment. . . . While the payment was into the court's registry, and not directly to the claimants, it nevertheless was a lawful and effective payment under the Interpleader Act. In effect the first decree converted the claims . . . into claims against the fund paid into the registry; . . ."

Ground No. 4 of 2015 is an attempt to revive in September, 1949, “More Definite Statement” submitted to the said Association on May 29, 1946, the issues of which have been pending before the District Court since the commencement of this litigation in 1946. Part or all of these issues were determined by the final judgment of the District Court of January 23, 1948, removing appellant Ammann as conservator and requiring him to account to the Court. [R. 8264-8267.]

Everyone of the four grounds of order 2015 directly affects matters pending in issue before the District Court.

Since the commencement of the litigation appellants and various others of the defendants have made repeated and persistent efforts to prevent adjudication on the merits by the District Court. Their efforts have fallen into several groups:

(1) To conduct administrative hearings before themselves and decide the litigation for themselves.

(2) To compromise or settle the litigation, or to pretend to be willing to settle the litigation to prevent decision by the District Court on the merits.

(3) To file diversionary and multifarious litigation in other Courts to obstruct and delay the process of a decision on the merits before the District Court.

(4) To, by continual and repeated objections to the jurisdiction of the District Court, prevent a decision on the merits.

It is significant that of the fifteen proceedings listed in the description of the litigation at the opening of this brief, but two were commenced by plaintiffs and appellees.



Of the ten appeals and writs, all have been taken by appellants. All of the three writs have been decided against appellants. Two of the prior appeals have been dismissed by appellants before a decision on the merits could be achieved. Of the four pending appeals now before this Court of Appeals, three attack the power of the District Court to allow fees to its own Special Master, or to counsel for a Shareholders Committee.

#### STATUS OF THE LITIGATION AT THE TIME OF ISSUANCE OF INJUNCTION APPEALED FROM.

The injunction appealed from was issued November 7, 1949, about 3½ years after the first seizure. [R. 8149.] In that 3½ year interval, the following events had taken place:

(1) The one-man commissioner appellant Fahey had been abolished and replaced with a three-man bi-partisan Home Loan Bank Board, which had vacated orders for administrative hearings, declined to decide and hear the litigation before itself and had submitted by general appearance, before the District Court for decision on the merits. [Ftn. 7, R. 8231-8232.]

(2) The seized Long Beach Association had been restored to its founding management. Appellant Ammann had been removed as conservator and ordered to account for his twenty months dealings with the \$26,000,000.00 which he seized, without issuing any receipt therefor. The order of Court removing him as conservator and requiring him to account was a year and a half old, and was final from lack of appeal. [R. 8310-8328.]

(3) Appellant San Francisco Bank had in compliance with an order of the District Court, deposited \$14,000,-



000.00 of notes, securities, government bonds, trust deeds, etc., into the Registry of the Court, which appellants now claim is without jurisdiction. [R. 8399-8525.]

(4) The District Court had, by preliminary injunction, enjoined the prosecution of other actions by the same litigants, one in the Northern District California Court at San Francisco [R. 8362-8375], and the other in the State of California Superior Court in Los Angeles County. [R. 8377-8398.] These injunctions were dated July 30, 1948 and February 2, 1949. Both these preliminary injunctions had become final from lack of appeal. [R. 8274-8276.] The District Court had quieted title (at first by fifty separate intervention proceedings and finally by the mass interpleader of \$14,000,000.00) to almost all of the homes of the 8,000 borrowers from the Association. Since March of 1948, there had been no difficulties with homeowners' titles, cleared by order of court.

(5) The Association, in the spring of 1949, had made Federal Savings and Loan Insurance Corporation and Home Indemnity Company (the surety company on conservator Amman's \$100,000.00 bond), defendants in the litigation in order to prevent the statute of limitations affecting the obligations of these defendants, during the pending settlement negotiations. [R. 6736-6790.]

(6) Settlement negotiations had been in progress for more than a year and a half and all parties had considered the litigation as compromised. [R. 8239-8242, 8258.]

(7) The Association, under its founding management, had resumed growth and prosperity. The ten million dollar run of withdrawals, lost under conservator Ammann, had been regained.<sup>3</sup> Of course, the Association was not

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<sup>3</sup>See chart plate, page 4 hereof.

of the size and financial condition that it would have been, had it not suffered the \$10,000,000.00 run and twenty months of conservatorship with complete interruption of growth.

The Los Angeles Bank was to be restored by the compromise agreed upon by all parties.

(8) A motion was on file with the Court seeking an order of Court requiring all parties, including appellants, to report to the Court on the progress of settlement negotiations which had been proceeding for a year and a half. [R. 7141-7155.]

#### APPELLANTS' PURPOSES.

At this stage of the proceedings and just three days before the Court was to hear the motion for an order requiring report on settlement negotiations, appellants Home Loan Bank Board issued and caused to be served, their Order 2015, proposing to withdraw from the Court the issues as yet undecided by the Court, and to have an administrative hearing before themselves, to hear and decide such issues. [R. 8242-8247.]

The Association was to show cause why the appellants should not appoint themselves (in their *alter ego* capacities as Federal Savings and Loan Insurance Corporation), as receiver for the prosperous and growing Association for the purpose of liquidation of the Association.

The effect of any such order appointing a receiver, will of course be to vacate and nullify the final judgment of the District Court removing appellant Ammann as conservator and restoring the Association to its founding management. Such administrative hearing would require the parties who had submitted their issues to the Court to

withdraw such issues from the Court and submit them to one of the litigants; at a trial wherein that litigant, would act as judge to decide whether or not that litigant would nullify the previous Federal Court judgment.

Among the issues of the litigation are claims for damages aggregating approximately \$20,000,000.00 against appellant Federal Savings and Loan Insurance Corporation by the Association and its shareholders. [R. 4161-4332.]

The appointment of Federal Savings and Loan Insurance Corporation as receiver for the Association would mean that one of the defendants in the damage claims, was receiver for the plaintiff upon such damage claims, and would dismiss or terminate such litigation against itself, or would determine what, if any, of the claims for damages should be submitted to the Courts for decision.

For the supervisory authorities to adopt a policy of appointing themselves receiver to conduct litigation of claims for damages against themselves, is a procedure somewhat unique, even as far as administrative agencies have gone in the last few years. It would shock the conscience of any equity Court to appoint the defendant as receiver for the plaintiffs to conduct both sides of the \$20,000,000.00 damage claims litigation. Appellants therefore found it necessary to attempt such appointment themselves.

Among the incidental duties which Federal Savings and Loan Insurance Corporation would exercise as such receiver is:



(a) The continued employment or the discharge of the attorneys who previously had successfully recovered the Association from the confiscation by appellant Ammann and his purported conservatorship;

(b) The approval or continued objections to the accounting of appellant Ammann for his twenty months dealing with the seized \$26,000,000.00. The Association and its shareholders' preliminary objections to such accounting had been sustained by the District Court and appellant Ammann for most of the year 1950, has been attempting to amend his accounting [R. 8987-8996];

(c) Whether or not to deliberately provoke another run of withdrawals to assist the liquidation of the Association, which was the only purpose for which Federal Savings and Loan Insurance Corporation would be appointed as receiver. (Title 24, C. F. R., Part 148, Secs. 148.1(10).)

Liquidation of the Association could of course be greatly accelerated by rapid withdrawal of all savings deposits. The disposal of the \$1,300,000.00 surplus remaining after such run of withdrawals, and which would remain in the hands of appellants Divers, Adams and LaRoque, their *alter ego* Federal Savings and Loan Insurance Corporation, is an interesting speculation. It perhaps sharpens their argument that the District Court has no jurisdiction, because until they could withdraw the \$14,000,000.00 in the Registry of the District Court they could not themselves dispose of that sum of money or of the \$1,300,000.00 surplus.



The grounds alleged as the basis for the appointment by one litigant of himself as receiver for his adversary, are obviously sham and frivolous. The payment of \$36,487.25 into the Registry of the Court, instead of to one of several conflicting claimants, the giving of an affidavit with the qualification as to the pendency of this mass of litigation, the inability to give financial statements pending the approval of the accounting of the removed conservator, would hardly seem to justify the summary liquidation of a solvent prosperous and growing savings institution, particularly in view of the fact that the management of the institution, when restored by order of the Federal Court, had posted a \$1,000,000.00 surety bond with the Court to guarantee faithful performance of all management duties.

The fact that the previous conservatorship allegations were all likewise bonded by a \$200,000.00 surety bond, upon which no recourse had ever been sought by appellants during the 5 years of litigation, likewise demonstrates the good or bad faith of their 1946 charges of mismanagement and misappropriation. [R. 3226.] If genuine protection of the Association and its shareholders was their intention, recourse to surety bonds guaranteeing and indemnifying against the very charges put forth, should have been the very first steps of any one acting in good faith.

Appellants' purposes were alleged in the motions for the injunction as the deliberate ruin of the solvent, prosperous and growing Association. [R. 7843-7895.] These

allegations were verified. It was alleged that appellants intended to provoke another \$10,000,000.00 (or greater) run of withdrawals. That they intended to again tangle the homeowners' titles as they had been tangled in the twenty months previous conservatorship. That they intended to take charge of the damage litigation against themselves and dismiss or delay it to the damage of the shareholders.

It is significant that not one of these allegations made under oath, has ever been denied by appellants.

The hearing for the injunction proceeded with appellants in default to these allegations. Their only defense to the Court's issuance of an injunction to prevent these grave and irreparable damages and detriments was that the District Court was powerless to prevent them carrying out their alleged intentions which for the purposes of the injunction hearings, they admitted to the District Court.

In view of these circumstances there can be no surprise at what the District Court did. It issued its preliminary injunction to preserve the *status quo*, pending its trial on the merits of the issues submitted to the District Court for decision by both appellants and appellees. It could have done nothing else and preserved any respect for the judicial process in free America. If a judgment of a Federal Court, final from lack of appeal for 1½ years, is to be nullified and vacated by the losing litigant at any time, at that litigants' will, the judicial branch of our Government has been abolished.

## PURPOSES OF INJUNCTION.

The preliminary injunction appealed from is only a PRELIMINARY Injunction. It merely stays the destructive hand of appellants from their second venture into ruin and seizure of a solvent growing and prosperous savings institution, until such time as the District Court can adjudicate the merits. The PRELIMINARY Injunction prevents appellants by their own hearing, seizing control of the entire litigation. Had the injunction not issued, within a course of days or at the most, weeks, appellants would have presented themselves to the District Court as both plaintiffs and defendants, they then could themselves have dismissed the litigation which for five years they have been unable to force the Court to dismiss.

Because this is class litigation, appellants would have had to apply to the District Court for approval or dismissal of such litigation, but whether dismissed or left pending, with appellants as both plaintiffs and defendants, in charge of the Association and its books and records, and in control of the litigation, there can be no doubt what would have happened to the \$20,000,000.00 damage claims against appellants. The preliminary injunction was to prevent appellants in their guise as receiver for the Long Beach Association from withdrawing the \$14,000,000.00 from the Registry of the Court, which the Court had by previous orders (final for 1½ years for lack of appeal), required to be deposited pending the Court's adjudication of the conflicting claims to those assets. [R. 8399-8525.]



In order to reverse this preliminary injunction, this Honorable Court of Appeals must hold either:

(a) That the District Court abused its discretion in preventing, pending its own decision, the matters above outlined; or (b) That notwithstanding a general appearance before the District Court by appellants, which has resulted in a final judgment affecting title and possession to \$26,000,000.00 in local assets, situated within the District of the Court and notwithstanding the deposit of \$14,000,000.00 of assets in the Registry of the Court, that the District Court is completely without jurisdiction to decide any issue of this litigation. It is not necessary that every pleading and every paragraph of the thousands of pages of such in this voluminous record be scrutinized by this Court of Appeals.

If there is a single issue made by any party properly before the District Court, the preliminary injunction to restrain appellants pending decision of that issue by the Court, was proper and must be affirmed.

The reluctance of Government officials claiming to exercise the supervisory authority of the United States, to submit the justice of their claims to an impartial Federal Court for decision requires explanation. The First Congressional Investigating Committee unqualifiedly condemned the former seizures and confiscations. [R. 9107-9191.] The United States Supreme Court, on appellants' first appeal, remanded the case to the District Court for a trial on the merits. [R. 2302-2304.]



Once the Shareholders Committee was financed for such a trial, appellants, rather than face the issues, returned the seized institution and ordered an accounting. When appellants decided to repudiate their settlement promises, they did so by their order seeking to bring the litigation before themselves for decision. The Congressional Committee had ruled against them. The Courts have ruled against them.

The issues of this appeal are simple. Can they try their own litigation before themselves, to the exclusion of the Federal Courts, created by the United States Congress, or must they, like any other litigant, submit to an impartial tribunal for a fair decision on the merits?

If the injunction is vacated and the District Court held without jurisdiction, the repetition of the run of withdrawals, the tangled titles, for the borrowers and the homeowners, and the destruction of the Association, will be immediate. Appellants admit their intention to do just these things. Are they to be prevented by affirmance of the injunction, or are they to be turned free to pursue for the second time, their unrestrained course of ruin and destruction?

Even this long statement of the case is but a summarization for the purposes of this appeal from a PRELIMINARY Injunction. A full statement of all occurrences in this litigation would unduly lengthen an already long brief. Only a minor part of the record is represented in the 24 volumes and nearly 11,000 printed pages of record on this one out of appellants' four appeals, now pending before this Court of Appeals.

## QUESTIONS PRESENTED.

THIS APPELLEE DISAGREES WITH THE STATEMENT OF QUESTIONS PRESENTED SET FORTH IN APPELLANTS' OPENING BRIEF, PAGES 21 TO 22, AND CONSIDERS THE QUESTIONS DECISIVE OF THIS APPEAL TO BE:

1. WHETHER APPELLANTS CAN ATTACK THE JURISDICTION OF THE COURT BELOW SEVERAL YEARS AFTER JUDGMENTS EXPRESSLY DETERMINING "THAT THE COURT HAS JURISDICTION OF THE PARTIES AND SUBJECT MATTER INVOLVED" HAVE BECOME FINAL BY DISMISSAL OF THEIR APPEALS THEREFROM.

2. WHETHER APPELLANTS CAN BY PURPORTED "ADMINISTRATIVE HEARINGS" VACATE AND NULLIFY JUDGMENTS OF THE FEDERAL COURT AGAINST THEM, FINAL FOR YEARS FROM LACK OF APPEAL THEREFROM.

3. WHETHER APPELLANTS CAN ORDER APPELLEES "TO SHOW CAUSE" WHY APPELLANTS SHOULD NOT, AT "ADMINISTRATIVE HEARINGS" BEFORE THEMSELVES, NULLIFY AND VACATE FINAL JUDGMENTS OF THE FEDERAL COURT TAKEN AGAINST APPELLANTS UPON THEIR GENERAL APPEARANCE AND CONFESSION OF JUDGMENT.

4. WHETHER APPELLANTS CAN ABANDON THEIR ADMINISTRATIVE HEARING IN DECEMBER OF 1947, MAKE A GENERAL APPEARANCE BEFORE THE COURT BELOW AND CONFESS JUDGMENT IN FAVOR OF APPELLEES AND A YEAR AND A HALF AFTER SUCH JUDGMENT BECOMES FINAL CONDUCT AN ADMINISTRATIVE HEARING TO VACATE SUCH FINAL JUDGMENT.

5. WHETHER APPELLANTS CAN WITHDRAW FROM THE COURT BELOW ISSUES PENDING IN LITIGATION BEFORE SUCH COURT FOR THREE AND ONE-HALF YEARS, AND DECIDE SUCH ISSUES BEFORE THEMSELVES AT THEIR SO-CALLED "ADMINISTRATIVE HEARING."

6. WHETHER JUDGMENTS OF THE COURT BELOW QUIETING TITLE TO REAL AND PERSONAL PROPERTY PHYSICALLY WITHIN THE TERRITORY OF THE DISTRICT

OF SAID COURT AND PHYSICALLY IN THE REGISTRY OF SAID COURT CAN BE NULLIFIED AND VACATED WITHOUT THE CONSENT OF ANY COURT, BY APPELLANTS AGAINST WHOM SUCH JUDGMENTS WERE ENTERED.

7. WHETHER APPELLANTS' MALICIOUS, FRAUDULENT AND UNJUSTIFIED SEIZURES AND LIQUIDATION OF THE SOLVENT GROWING \$46,000,000.00 LOS ANGELES BANK AND \$26,000,000.00 LONG BEACH ASSOCIATION CAN BE REVIEWED OR CORRECTED BY ANY COURT.

8. WHETHER APPELLANTS CAN APPOINT THEMSELVES AS RECEIVERS FOR PLAINTIFFS, THEREBY OBTAIN CONTROL OF PLAINTIFFS' DAMAGE CLAIMS AGAINST APPELLANTS FOR \$20,000,000.00 AND DISMISS SUCH CLAIMS WITHOUT PAYMENT.

9. WHETHER APPELLANTS CAN BY "ADMINISTRATIVE HEARINGS" APPOINT THEMSELVES AS RECEIVERS FOR THE LIQUIDATION OF A SOLVENT, GROWING AND PROSPEROUS FEDERAL SAVINGS AND LOAN ASSOCIATION.

10. WHETHER ON AN APPEAL FROM A PRELIMINARY INJUNCTION BEFORE COMPLETE TRIAL ON THE MERITS APPELLANTS CAN ATTACK, AND SEEK TO REVERSE, EARLIER FINAL JUDGMENTS OF THE COURT BELOW.

11. WHETHER THE COURT BELOW ABUSED ITS DISCRETION IN GRANTING A PRELIMINARY INJUNCTION TO PREVENT APPELLANTS INTERFERING WITH ITS JURISDICTION AND FINAL JUDGMENTS BY REQUIRING APPELLEES TO APPEAR BEFORE APPELLANTS AT HEARINGS TO SHOW CAUSE WHY APPELLANTS THEMSELVES SHOULD NOT VACATE THE FINAL JUDGMENTS OF THE FEDERAL COURT AGAINST APPELLANTS AND IN FAVOR OF APPELLEES.

12. WHETHER THE COURT BELOW ABUSED ITS DISCRETION IN GRANTING A PRELIMINARY INJUNCTION TO PREVENT APPELLANTS FROM DELIBERATELY PROVOKING A SECOND \$10,000,000.00 RUN OF WITHDRAWALS OF DEPOSITS FROM APPELLEE ASSOCIATION AND ANOTHER PROTRACTED PERIOD OF TANGLED TITLES FOR THE HOMES OF 8,000 BORROWERS FROM APPELLEE ASSOCIATION.



## SUMMARY OF ARGUMENT.

The preliminary injunction, the subject of this appeal, can be affirmed without detailed analysis or consideration of the 25,000 page record on appeal, or the 11,000 page printed record. The only proper subjects of inquiry are:

(1) Did the Court below abuse its discretion in granting the preliminary injunction and

(2) Was there any grounds stated for any relief in any of the multitude of pleadings?

No abuse of discretion has even been urged by appellants in their opening brief. Pleadings stating claims for relief have already been the subject of final judgments by the court below, the protection of which final judgments was one of the grounds for issuance of the Preliminary Injunction. The Preliminary Injunction should be affirmed on these grounds alone without further inquiry.

Appellants devote the major portion of their opening brief to an attack on the jurisdiction of the court below. On this appeal from a preliminary injunction, jurisdiction sufficient to justify such injunction is all that need be found. Inquiry into the Court's jurisdiction to grant every prayer for relief contained in all the pleadings is proper only on appeal from a final judgment.

The Court has jurisdiction over appellants on many grounds. Among them are:

A. The general appearance made by appellants by formal resolution certified to under appellants' seal and filed with the Court below as required by the express terms of such resolution.



By appellants seeking and receiving affirmative relief from the Court below. Such relief consisted of:

(1) A special election of directors of appellee Long Beach Association, conducted by the Court's special master (appellants' former attorney in the litigation), at the express request of appellants made to the Court below.

(2) The filing of a \$1,000,000.00 bond by officers of appellee Long Beach Association with the Court below on order of the Court at the express request of appellants.

(3) Appellants also sought but did not receive an order of the Court below confirming and validating all acts of appellant Ammann as conservator.

B. The Court has jurisdiction over appellants served with Summons or other process, anywhere in the United States, such jurisdiction was under old Section 118, Title 29, New Section 1655, Title 28, U. S. C. A., which expressly provides for out of state service on absent defendant in actions to quiet title to, or recover possession of, real or personal property, situated within the territory of the District Court.

C. The Court had jurisdiction in interpleader over appellants by the express terms of old Section 41(26), Title 28, New Sections 1335, 1397 and 2361,—28 U. S. C. A. The Court below had nationwide jurisdiction and process both to enjoin and to summon defendants in any state, including the District of Columbia. The Court also had jurisdiction in interpleader over appellants under its general equity powers and under interpleader, pursuant to Rule 22, F. R. C. P.

D. The Court had jurisdiction over appellants by authority of its former final judgments made during the three and one-half years during which the litigation had

been pending, such final judgments expressly found the Court had jurisdiction “over the parties and subject matter involved,” writs and appeals taken against such judgments to the United States Supreme Court and to this Court of Appeals in 1946-1947-1948 were denied or dismissed. Appellants have failed to appeal from similar judgments, finding and exercising jurisdiction in the Court below. Such final judgments and orders are *res adjudicata* and law of the case on jurisdiction of the Court below.

E. The Court has jurisdiction over appellants, who are doing business in California, by the terms of Section 1391(c), New Title 28, U. S. C., which reads in part:

“A corporation may be sued in any judicial district in which it . . . is doing business and such judicial district shall be regarded as the residence of such corporation. . . .”

F. The Court had jurisdiction to hear the case on the merits to decide its jurisdiction,

*Land v. Dollar*, 330 U. S. 731, 91 L. Ed. 1209  
(U. S. Supreme Court, 1947),

and similar Supreme Court decisions hold that a Federal Court has jurisdiction to hear the merits when decision of the merits is decisive of the jurisdiction of the Court. An action against officers of the United States alleging wrong-doing, abuse of discretion and other torts is such an action.

Appellants are “sue or be sued” corporations, agents, conservators, receivers and agencies are not immune from suit as agencies or instrumentalities of the United States. The sue or be sued clause, express waiver of such immunity by Congress, in creating many of appellants, by necessary implication, extends to the entire statutory

scheme of home financing agencies for loans on real property and re-discounting of such loans.

Appellants' administrative orders under review in the court below are all reviewable, both by the express terms of the administrative procedure act and under the inherent powers of Federal Courts to enforce constitutional safeguards.

None of appellants are indispensable parties, nor are there any indispensable parties to these actions. There can be no indispensable parties to actions *in rem* to recover possession of, and quiet title to, real and personal property within the territorial jurisdiction of the Court hearing such action.

All of the 84 findings in the Preliminary Injunction appealed from, as well as the many other findings in the prior final judgments of the court below, are conclusive and unassailable upon this appeal. Appellants have failed to print the entire record of proceedings in the court below and have likewise failed to point out in their briefs any absence of evidence or anything other than conflict of evidence. The court below heard the personal testimony and cross-examination of witnesses, who testified in many of the 100 hearings during the three and one-half years of the litigation prior to the preliminary injunction.

The preliminary injunction was proper as "necessary and appropriate process" authorized by the express terms of the administrative procedure act to preserve status and rights pending conclusion of review proceedings pending before the court below.

The preliminary injunction was also required to prevent interference with the jurisdiction of the court below and prevent violation of its previous final judgments.



The preliminary injunction was also essential to prevent appellants appointing themselves as plaintiffs in litigation in which they are already defendants and thereby under the guise as acting as receivers obtain control and direction of litigation in which appellants are defendants.

The preliminary injunction was appropriate to prevent wasteful and costly multiplicity and duplication of actions and proceedings. Proceedings in the Court below against appellants had already been the subject of expenditure of approximately \$500,000.00 in attorneys' fees, special master fees, Court costs, and other expenses of litigation. Appellants sought to require a duplication of such proceedings before themselves in Washington, D. C., 3,000 miles from where the litigation has been pending at Los Angeles, for almost five years.

The injunction was necessary to prevent appellants deliberately causing irreparable injury including but not limited to, another \$10,000,000.00 run of withdrawals from appellee Long Beach Association, and another period of several years of tangled titles for the 8,000 homeowners, borrowers from appellee Long Beach Association. Such irreparable injury was threatened by appellants as coercion to compel appellees to abandon prosecution of \$20,000,000.00 damage claims in this litigation against appellants.

The preliminary injunction appealed from should be affirmed as within the discretion of the Court below which had jurisdiction to issue such injunction on a multitude of grounds, the shortest and simplest of which was to protect the integrity of its final judgments entered against appellants in the three and one-half years of this litigation previous to such preliminary injunction.



I.

SCOPE OF REVIEW ON APPEAL FROM  
PRELIMINARY INJUNCTION.

Appellants treat these appeals as reviewing everything done by the Court below in the nearly five years that this litigation has been pending. (App. Op. Br. pp. I to III.) Such is not the review accorded by an appeal from a Preliminary Injunction. On such an appeal, this Honorable Court of Appeals need determine but two things:

(1) was the preliminary injunction an abuse of discretion by the Court below; and

(2) were there any allegations entitling plaintiffs to some relief.

It is wholly unnecessary for this Honorable Court of Appeals to comb through the 25,000 page record (or even this 11,000 page printed record) and test the sufficiency of every allegation of the multitude of pleadings. At the moment the reviewing Court finds a single pleading, or allegation entitling the plaintiffs to a trial on the merits, a Preliminary Injunction preserving the *status quo* pending such a trial, can be affirmed.

Since this litigation commenced in 1946, appellants have allowed to become final, many prior appealable orders which they could have reviewed had they so desired. [R. 8310, 8399, 8526, 8362, 8377. NOTE: R. 8288-8292 lists fifty such orders.] The sufficiency of the pleadings, the jurisdiction of the Court below, and the correctness of the final judgments made in earlier years, are not now made reviewable because appellants have deliberately provoked another preliminary injunction. They cannot thereby ob-

tain a review of judgments which have been final for two, three or four years; nor can they, by these appeals, as they have been so desperately striving to do for nearly five years, prevent a trial on the merits before the Court below and a full inquiry into these unjustifiable confiscations.

The U. S. Supreme Court has repeatedly held that an appeal from a preliminary injunction does not cast upon the reviewing Court, the burden of inquiring into the whole prior record; nor does it compel the reviewing Court to review all pleadings and rulings of the Court below. A leading case on this point is:

*Deckert v. Independence Shares Corp.*, 311 U. S. 282, 85 L. Ed. 189 (1940).

Appeal from Preliminary Injunction restraining trustee from dissipation of assets. Plaintiff's complaint prayed for accounting, receiver, injunction rescission, etc. The District Court denied motions to dismiss, granted a preliminary injunction, and took under submission, the question of the appointment of a receiver. The District Court also appointed a Special Master to ascertain complicated issues *re* insolvency.

Defendants appealed from the preliminary injunction. The Circuit Court attempted to determine the scope of the action before the District Court, reversed the preliminary injunction and directed amendment of the complaints in the District Court.

The U. S. Supreme Court reversed the action of the Court of Appeals, affirmed the District Court in granting the preliminary injunction and held that all the incidental

matters of the litigation should not be settled upon the appeal from a preliminary injunction. The Supreme Court said:

“It is enough at this time to determine that the bill contains allegations which, if proved, entitle petitioners to some equitable relief. WHETHER OR NOT THEY SUFFICIENTLY ALLEGE or prove THEIR RIGHT TO ALL OF THE RELIEF PRAYED in the bill we do not decide BECAUSE THE QUESTION IS NOT BEFORE US. Hence, if the District Court had jurisdiction it was proper to consider whether injunctive relief should be given in aid of the recovery sought by the bill . . .

“We hold that the injunction was a reasonable measure to preserve the *status quo* pending final determination of the questions raised by the bill. ‘It is well settled that the granting of a temporary injunction, pending final hearing, is within the sound discretion of the trial court; and that, UPON APPEAL, AN ORDER GRANTING SUCH AN INJUNCTION WILL NOT BE DISTURBED UNLESS contrary to some rule of equity, or THE RESULT OF IMPROVIDENT EXERCISE OF JUDICIAL DISCRETION.’ (Citing authorities.) . . .

“In view of this we cannot say that the trial judge abused his discretion in granting the temporary injunction.

“We conclude that the orders granting the temporary injunction and denying the motions to dismiss were correct and should have been sustained. The orders allowing the addition of two plaintiffs and referring the issue of insolvency to a master were interlocutory and not appealable (28 U.S.C.A., Sec. 225), and should have been reversed only if peti-



tioners were not entitled to any equitable relief. (Citing authorities.) The Circuit Court of Appeals properly did not consider them on the merits, and if ultimately there is an appeal from a final decree the correctness of these orders may be examined.

“The decision of the Circuit Court of Appeals is reversed and the cause is remanded for further proceedings in conformity with this opinion.

“Reversed and remanded.” (Emphasis added.)

Another case where decision of the merits on an appeal from a Preliminary Injunction was held improper, is:

*Rogers v. Hill*, 77 L. Ed. 1385, 289 U. S. 582,  
U. S. Supreme Court, 1933.

Plaintiffs sued for recovery of payments they claim were illegally made and to enjoin additional payments of the same nature. A Preliminary Injunction is granted by the District Court. Defendants appealed. On the first appeal, C. C. A. reversed the interlocutory injunction and in its opinion discussed matters going to the merits of the case.

Upon the remand to the District Court, it vacated the Preliminary Injunction and dismissed the complaint on the merits.

Plaintiffs again appealed and C. C. A. affirmed the dismissal. The U. S. Supreme Court reversed and held:

(1) That an appeal from a temporary injunction did not decide the merits and therefore a reversal of such injunction did not decide the merits.

(2) That the Court below yet had jurisdiction to permit amended or additional pleadings, vary or expand the issues, and take other proceedings.



The Supreme Court said:

“ . . . the Circuit Court of Appeals reversed the interlocutory order and directed that a mandate issue to the District Court ‘in accordance with this decree.’ The mandate directed further proceedings in accordance with ‘the decision.’ On the coming down of the mandate, the district court vacated the temporary injunction and dismissed the bills of complaint upon the merits. Plaintiff appealed, the Circuit Court of Appeals affirmed, citing its opinion on the former appeal, and this court granted . . . certiorari. . . .”

“We are of the opinion that the mandate did not direct dismissal. The granting of temporary injunction involved no determination of the merits. Such a decree will not be disturbed on appeal except for improvident allowance, violation of the rules of equity or ABUSE OF DISCRETION. (Citing authorities.) The opinion of the Circuit Court of Appeals did indeed deal with matters affecting the merits but the decree did not extend beyond mere reversal of the order from which the appeal was taken. . . .”

“Moreover, if the court intended to direct dismissal, it is to be presumed that it would have done so unequivocally and directly by means of language, form of decree and mandate generally employed for that purpose. But, assuming it included the opinion, THE MANDATE WOULD NOT PREVENT THE DISTRICT COURT in the exercise of a sound discretion FROM ALLOWING PLAINTIFF, WERE ADEQUATE SHOWING made, to FILE ADDITIONAL PLEADINGS, vary or EXPAND THE ISSUES and take other proceedings to enforce the accounting sought by his bills of complaint.” (Citing authorities.)

“ . . . The decree of the Circuit Court of Appeals is reversed, the decree of the district court dismissing the bills on the merits is vacated, and the case is remanded to the district court WITH DIRECTIONS TO REINSTATE ITS DECREE GRANTING INJUNCTION PENDENTE LITE and for further proceedings in conformity with this opinion.” (Emphasis added.)

Notwithstanding the reversal of an earlier temporary injunction, the U. S. Supreme Court on the second appeal, directed the District Court “to reinstate its decree granting injunction *pendente lite*.”

A Preliminary Injunction can be reversed only if the Court below has abused its discretion. In determining whether or not such discretion has been abused, the Court of Appeals can weigh the injury resulting from a denial, as against the inconvenience (if any) imposed by granting of such preliminary injunction. The Court below inquired as to the inconvenience resulting from the granting of the preliminary injunction and found [R. 8276]:

“63. That no harm, loss, injury or damage can result to the shareholders, stockholders, borrowers, defendants Home Loan Bank Board, Federal Savings and Loan Insurance Corporation, the members or trustees thereof, the public interest, and any or all other defendants or parties to this litigation, from restraining said hearing and proceedings called by Home Loan Bank Board Order No. 2015, until such time as this Court can hear upon the merits, the issues pending herein awaiting trial, or until further Order of this Court.”

The Court below also found [R. 8233]:

“21. That as a requirement of the Order of this Court removing defendant Ammann as purported

conservator from the possession and control of the assets, business and affairs of said Long Beach Federal Savings and Loan Association, this Court ordered that a \$1,000,000.00 surety company bond be filed by the officers of said Association with this Court as security during the time they were in such possession and control of the assets, affairs and business of said Association, under said Order of this Court.

“The said bond remains on file with this Court in full force and effect. That neither defendants Home Loan Bank Board, *et al.*, or any other person whomsoever, has ever made application to this Court for any recourse on said bond or said Order of this Court, nor have they, nor has any one, made any charges of wrong-doing or misconduct on the part of said association, or its officers and directors, on which this Court could direct proceedings against said bond.”

The Court below further found [R. 8276]:

“64. That the only amounts of money disclosed in said Order No. 2015 in any of the four grounds or reasons therein contained is the said sum of \$36,487.25, which sum, in cash, is already on deposit in the Registry of this Court, in excess of, and above the amount of said \$1,000,000.00 surety company bond. That the deposit in Court of said \$36,487.25, of disputed insurance premiums by said Association, adequately protects the interest of said Federal Savings and Loan Insurance Corporation pending adjudication of the issues of this cause, and that said \$1,000,000.00 bond adequately protects said Association and its shareholders, borrowers and others doing business with it, pending the hearing by this Court on the merits of the issues pending herein awaiting trial.”



By these findings, the Court weighed the inconvenience resulting to appellants from such injunction and concluded that appellants were completely and adequately protected from any harm or injury which could result from a preliminary injunction to preserve the *status quo* pending trial on the issues of the merits by the Court below. The Court below said in the concluding paragraph of its Order [R. 8309]:

“In view of the fact that a bond in the sum of \$1,000,000.00 is now on deposit in this Court by the officers of said Association, the bond as security in accordance with the provisions of rule 65, subdivision (c) Federal Rules of Civil Procedure, is hereby fixed in the nominal sum of \$5,000.00.”

The Court weighed on the other hand the irreparable injuries threatened by appellants if the preliminary injunction appealed from were not granted. Finding No. 34 covers Record pages 8249 to 8256. Such finding skeletonized and summarized, is [R. 8249]:

“34. That the injuries threatened by the actions and proceedings hereby enjoined pending trial on the merits, or further order of this Court, are:

(a) Undermining of public confidence and faith in appellee Long Beach Association, taken from possession of appellants and given to appellee by prior order of the Court below.

(b) Causing fear in the depositors and thereby probably starting another run of withdrawals similar to, or greater than, the \$10,000,000.00 run of such withdrawals previously suffered when appellants first seized the association in 1946.



(c) Again clouding the titles to the homes of the 8,000 borrowers from said association, as such titles were previously clouded and rendered unmarketable during the first two years of the litigation.

(d) and (e) Orders by appellants inflicting penalties on appellees and thereby interfering with the process, orders and judgments of the Court below.

(f) and (g) Needless duplication and multiplicity of actions by requiring appellees to travel 3,000 miles to Washington, D. C., to duplicate the trial before the Court below. That such multiplicity of actions and duplication of trials violates Section 5(a) of Administrative Procedure Act, 5 U. S. C. 1004(a) as to convenience of parties and their representatives.

(h) Appellants would appoint themselves receivers for liquidation of appellee solvent Long Beach Savings and Loan Association. That for appellees to have complied with the requirements of said Order 2015 calling said hearing before appellants, would have waived the issues of this litigation in multi-million dollar amounts specified in twelve sub-paragraphs of said finding, the aggregate of such amounts totals in excess of \$40,000,000.00.

(i) That appellants attempted to compel appellees to either default the pending proceedings before the Court below or default appellants hearing (set before appellants by themselves), by deliberately timing appellants' hearings so as to conflict with Court hearings and thereby make impossible appellee's attendance on both hearings scheduled

almost simultaneously to be held at Los Angeles, California, and in Washington, D. C., 3,000 miles apart.

By these findings, the Court below determined that no harm would result to appellants by postponement of their own hearing before themselves and that grave and irreparable injury would be sustained by appellee unless such hearing were so postponed by this preliminary injunction.

This factual situation, appellants suffering no injury and adequately protected by a \$1,000,000.00 bond and appellees threatened with irreparable, immediate and grave injury and without any protection whatsoever, is almost identical with the case of:

*Prendergast v. N. Y. Telephone Co.*, 262 U. S. 43,  
67 L. Ed. 853-1923.

Appeal by Public Service Commission of the State of New York, from a preliminary injunction enjoining enforcement of rate reductions alleged by plaintiffs to be confiscatory.

The trial court enjoined enforcement of the orders pending trial on the merits and required a \$6,000,000.00 bonds to secure repayment, if the charges collected during the suit were found to be excessive. The suit was brought and the preliminary injunction issued prior to the final conclusion of the administrative hearing before the Public Service Commission. Appellants urged: that the enjoining Court lacked jurisdiction; that the pleadings were

insufficient; that the action was prematurely filed; and that injunction was granted upon insufficient evidence.

All of these contentions were overruled by the U. S. Supreme Court, which said:

“ . . . It is well settled that the granting of a temporary injunction, pending final hearing, is within the sound discretion of the trial court; and that, upon appeal an order granting such an injunction will not be disturbed unless contrary to some rule of equity, or the result of improvident exercise of judicial discretion. (Citing authorities.) Especially will the granting of the temporary writ be upheld when the balance of injury as between the parties favors its issue. (Citing authorities.) Here the commission had prescribed temporary rates which were found to be confiscatory, which were to continue in effect pending the final determination of the commission after its investigation had been completed; and no date had been fixed for the completion of this investigation or the final hearing. The company, meanwhile, could only be protected from loss by injunction; while on the other hand, its subscribers were protected by the bond which was required for the return of the excess charges collected if the injunction should be thereafter dissolved. . . . ”

“And finding nothing in the record which justifies us in concluding that the District Court improvidently exercised its judicial discretion in granting the interlocutory injunction, its order is affirmed.” (Emphasis added.)

Appellants have never applied to the Court below for any relief on the million dollar bond, now on file with said Court for more than three years, nor have they claimed it was inadequate to protect them. [R. 8233-8235.]

A case wherein the Court of Appeals for the First Circuit reviewed many earlier United States Supreme Court decisions and refused, under the authority of such decisions, to review any issue other than abuse of discretion of the Court below in granting a preliminary injunction was:

*Munoz v. Porto Rico Ry. Light & Power Co.*, 83 F. 2d 262; (C. C. A. 1-1936.)

Certiorari denied 298 U. S. 689; 80 L. Ed. 1408 (1936).

Appeal from preliminary injunction and from order refusing to dissolve preliminary injunction. The Circuit Court of Appeal for the First Circuit said at page 268:

“ ‘It is well established doctrine that an application for an interlocutory injunction is addressed to the sound discretion of the trial court; and that an order either granting or denying such an injunction will not be disturbed by an appellate court unless the discretion was improvidently exercised. \* \* \* The duty of this court, therefore, upon an appeal from such an order, at least generally, is not to decide the merits, but simply to determine whether the discretion of the court below has been abused.’ (Citing authorities.)

“ ‘The only question presented by the record upon this appeal is whether the District Court abused its



discretion in granting an injunction until the case could be heard upon the merits. \* \* \* As no abuse of discretion is shown, the order must be affirmed.' (Citing authorities.)

"In *Ohio Oil Co. v. Conway*, 279 U. S. 813, 815, 49 S. Ct. 256, 73 L. Ed. 972, in a *per curiam* the Supreme Court laid down the rule:

" 'Where the questions presented by an application for an interlocutory injunction are grave, and the injury to the moving party will be certain and irreparable, if the application be denied and the final decree be in his favor, while if the injunction be granted the injury to the opposing party, even if the final decree be in his favor, will be inconsiderable, or may be adequately indemnified by a bond, the injunction usually will be granted. *Love v. Atchison, Topeka & Santa Fe R. Co.* (C. C. A.) 185 F. 321, 331, 332.'

"In *Love v. Atchison, Topeka & Santa Fe R. Co.* (C. C. A.) 185 F. 321, 331, cited in the above case, the court again stated the rule in such cases:

" 'An appeal from an order granting or refusing an interlocutory injunction does not invoke the judicial discretion of the appellate court. The question is not whether or not that court in the exercise of its discretion would make or would have made the order. It was to the discretion of the trial court, not to that of the appellate court, that the law intrusted the granting or refusing of these injunctions, and the only question here is: Does the proof clearly establish an abuse of that discretion?' (Emphasis added.) (Citing authorities.)

“ ‘The appellant sets out 10 assignments of error. They all go to the merits of the controversy, and could very properly be discussed if the case were here after a full hearing. But the question this court at this stage is called upon to decide is whether the court below, having the discretion to grant or refuse the temporary injunction, has in this instance abused its discretion.’

“The Supreme Court generally disposes of appeals from interlocutory orders granting temporary injunctions by affirming upon the authority of cases holding that the matter rests in the sound discretion of the trial court. (Citing authorities.)

“We are not satisfied that there was any abuse of judicial discretion by the District Judge in granting the temporary injunction . . . thereby preserving the *status quo* until a hearing on the merits. This is the only question before this court on this issue.”

“Where questions both of law and facts are involved and the trial court in its discretion has issued a temporary injunction to preserve the *status quo* until these questions can be presented on final hearing, this court on appeal will not undertake to find the facts or to lay down rulings on specific issues . . . .”

Appellants in their opening brief of 180 pages (including appendix) devote about four pages to the question of the preliminary injunction from which they appeal, and nowhere in those four pages do they suggest or discuss that it was an abuse of discretion by the Court below.  
(App. Br., p. 108.)

It is therefore obvious that appellants have undertaken on this appeal to attack and review matters not reviewable on an appeal from an interlocutory injunction. The remaining 180 pages of appellants' brief (including appendix) asks this Court of Appeals to review, prior to final judgment, all of the previous rulings of the Court below and all of the pleadings, neither of which is a proper subject for review on this appeal.

Appellants devote the major portion of their brief to an attack upon the jurisdiction of the Court below.

We believe it proper that the jurisdiction of the Court to make the preliminary injunction should be demonstrated. But this does not necessitate inquiry into every relief sought in the mass of pleadings. These matters are reviewable ONLY ON APPEAL FROM A FINAL JUDGMENT.

Further the jurisdiction of the Court below to make the preliminary injunction is to be considered AS OF THE DATE OF THE PRELIMINARY INJUNCTION, not the date of commencement of the action. The question of affirmance or reversal of the preliminary injunction is to be considered in the light of circumstances existing at the time of DECISION OF THIS APPEAL.

The U. S. Supreme Court so held in the recent case of:

*Chapman v. Sheridan-Wyoming Coal Company*,  
338 U. S. 621, 94 L. Ed. 393 (U. S. Supreme  
Court—Feb. 1950).

Appeal from order dismissing action for an injunction. Review of injunction was based upon facts which occurred during the course of the litigation. Appellant insisted the action must be tested and the reversal of the injunction considered in the light of conditions existing at the commencement of the action.

The U. S. Supreme Court said, in equity: “. . . The question on injunction is whether the action threatened will be a violation if it now takes place. . . .”

“. . . Plaintiff insists that the Secretary is required to act in the light of conditions when Big Horn first applied, and not as of now when it has built up a going business on the inadequate state leases, aided by war conditions.

“But the action is one in equity, and ‘equity will administer such relief as the exigencies of the case demand at the close of the trial.’ (Citing authorities.) The question on injunction is whether the action threatened will be a violation if it now takes place in light of conditions shown by the proposed amended complaint. That pleads findings of the Department which show what has happened since the Big Horn application was filed. . . .” (Emphasis added.)



II.

THE COURT BELOW HAS JURISDICTION.

A. The Court has jurisdiction over appellants:

(1) Who made general appearances before the Court and applied for, and received affirmative relief from the Court below;

B. Under Section 118, Title 28, as it existed when the actions were filed in 1946, and as amended in 1948 into Section 1655, Title 28.

C. In interpleader:

(1) Under Section 41, Subdivision (26), Title 28, statutory interpleader as it existed in 1946, when the actions were commenced and the original interpleader filed, and as amended in new Title 28, Sections 1335, 1397 and 2361;

(2) Under inherent equity interpleader and bills in the nature of interpleader in federal courts generally;

(3) Interpleader under Rule 22 F. R. C. P.

D. By former judgments and orders, the Court has expressly and impliedly held that it has jurisdiction over appellants, and all other parties, and over the subject matter of the actions.

(1) Appellants have dismissed previous appeals from judgments containing the express findings that the Court has jurisdiction over the parties and the subject matter.

(2) Appellants have failed to appeal from judgments containing the express finding that the Court has jurisdiction over parties and the subject matter.

(3) In many orders and judgments, the Court has impliedly exercised jurisdiction over appellants and the subject matter.

(4) All of the foregoing judgments and orders (1) to (3) have become final, are *res adjudicata*, and the law of this case.

### GENERAL APPEARANCE.

A. The Court has jurisdiction over appellants:

(1) Who made general appearances before the Court and applied for and received, affirmative relief from the Court below.

At the time the preliminary injunction was issued, appellants had by official resolution, under seal, made a general appearance and their counsel had sought and obtained affirmative relief from the Court below. [R. 8301-8302, 3404, 10303-10334.] In considering the many sources of the Court's jurisdiction, we shall therefore discuss such general appearance first among the many sources of the Court's jurisdiction.

Whatever may have been the prior situation in regard to immunity from suit, indispensable parties, lack of jurisdiction of the subject matter, non-reviewable orders, and the multitude of other pleas in abatement; on January 17 to 23, 1948, the Court below acquired jurisdiction in personam over all appellants. That jurisdiction was conferred by appellants' Order No. 388 [R. 3404], which confessed judgment as to many of the then pending issues of the litigation. The only parties who could be claimed to be indispensable, were appellant Home Loan Bank Board. Order No. 388 was a formal resolution unanimously adopted by all of the then members

of the said appellant board. A certified copy thereof under the seal of said appellant board was duly filed with the Court below. Such filing was expressly pursuant to the terms of such Order. [R. 3405.]

The events immediately preceding Resolution No. 388, emphasize even more vividly than the terms of the Resolution, the intent to submit to the Court all issues not abandoned by the confession of judgment.

At the commencement of the litigation, a year and a half previously, appellant Fahey had insisted upon being his own judge at an administrative hearing before himself. The hearing had been enjoined by the Court below and appeals from such injunctions had been heard before the U. S. Supreme Court, which remanded the case to the District Court for further proceedings, but dissolved the injunction against the administrative hearing.

By late December of 1947, appellant Fahey was no longer a public official. His one-man "Federal Home Loan Bank Administration" had been reorganized into the three-man "Home Loan Bank Board." The administrative hearing was re-set for December 15, 1947, at Los Angeles. The Shareholders Protective Committee protested the hearing before Fahey, Adams and Dyke, then members of the board, and defendants in this litigation, of the issues pending before the U. S. District Court for decision. [R. 2914.]

The Association amended its request for the administrative hearing. The amendment of the request for hearing urged a trial on the merits before the Court below, rather than one of the litigants conducting a hearing of his own case. The protests against the administrative hearing were heeded, and appellants Home Loan Bank Board postponed such hearing indefinitely.



Within one week of such postponement, appellant Fahey's term expired and the President failed to reappoint him as a board member. He was thereafter no longer a public official.

The litigation was then pending in the Court below for decision on the merits with the administrative hearing abandoned to facilitate such Court's decision.

On January 17, 1948, about one month after abandoning the administrative hearing, appellant Home Loan Bank Board, by adopting Order No. 388, unanimously voted to rescind the appointment of appellant Ammann as conservator, to remove him from possession of said Association, and required that he account with the shareholders and file such accounting with the Court below.

The case before the Court below was an action by the shareholders, referred to in such Order 388 (through their Protective Committee, plaintiffs herein) to obtain among other things, the exact relief confessed by Order No. 388, that is, the removal of Ammann as conservator, the return of the Association, and an accounting.

The requirement of Order No. 388 that "a copy of such accounting be filed with the District Court of the United States, in and for the Southern District of California" was a submission to the jurisdiction of the Court below, at least for the purposes of such accounting and its approval. However 388 went much further than an accounting. The last paragraph is:

"Be It Further Resolved that a certified copy of his resolution be forthwith delivered to the above-



named Court and to counsel for each of the parties of record in actions numbered 5254 P. H. and 5678 (WM) PH in said Court, except counsel for Intervenors in said actions, and that a copy be furnished to the Conservator.” [R. 3405.]

As a result of this clause of the order, a certified copy was filed with the Court below. A petition by the Shareholders, plaintiffs in the action, and named in the resolution as the persons with whom Ammann was to account and whose representatives were to receive upon demand the assets, books and records of the Association, was presented to the Court. A hearing was held before the Court below upon such petition. [R. 10303-10334.]

More than three years have elapsed since the preparation of this transcript during which time, appellants have made no objections to the correctness of the matters therein contained.

Two counsel appeared for appellants Home Loan Bank Board, Fahey, *et al.* One, Honorable James M. Carter, then U. S. Attorney, now a U. S. District Judge at Los Angeles. The other, William F. McKenna, described in the appearances as “Principal Attorney, Home Loan Bank Board, Attorney for Defendant Home Loan Bank Board.” [R. 10304.]

Nowhere throughout the 34 pages of transcript is there any reference to a special appearance.

The judgment, conceded by appellants at page 82 of their brief, to be a final judgment, was never the subject of an appeal, or even a motion to vacate or correct.

Appellants through their counsel Honorable James M. Carter and “Principal Attorney,” William F. McKenna,

objected strenuously, on the merits of interpretation of the resolution. They vehemently insisted that there must be a special election of directors of the appellee Association and read to the Court a telegram from appellants H. L. B. B. to that effect. [R. 10311-10317.]

The Court proceeded to grant in part the relief appellants thereby sought and ordered such an election under the supervision of the Court. Principal Attorney McKenna, appearing generally for appellants Home Loan Bank Board, et al., said:

“ . . . It is entirely satisfactory that the conduct of that election be under the order and direction of this Court.” [R. 10314.]

Upon such assurances, the Court did appoint its special master to conduct such election, and in making such appointment, Principal Attorney McKenna for appellants Home Loan Bank Board, *et al.*, stated to the Court as follows [R. 10326]:

“The Court: May I ask the United States Attorney, Mr. Carter, whether or not they consent to the appointment of Mr. Walker as Master?”

Mr. Carter: We will consent, on condition, of course, that he take a leave of absence from the Justice Department for that purpose.

The Court: Well, it contemplates, of course, that he would not be a United States Attorney. In other words, acting as Special Master he would be an arm of the Court and responsible to the Court.

Mr. McKenna: As a representative of the Board, do you wish to consent to his appointment?

Mr. McKenna: We do, sir.”

Not only did the United States Attorney for the District and the Principal Attorney for the appellant Home Loan Bank Board make a general appearance, but in addition, the United States Attorney, acting for appellants, asked the Court for affirmative relief, which was granted in part and denied in part [R. 10332]:

“Mr. Carter: . . . I wonder if it might be proper to suggest that there be included in the order some statement to the effect that the acts of Ammann during his occupancy be considered legal acts of a Conservator duly appointed, . . . .”

Appellants having asked the Court that “the acts of Ammann during his occupancy be considered legal acts of a Conservator duly appointed,” can hardly maintain the Court was without jurisdiction to make the order for which they applied.

The other affirmative relief requested by appellants and granted, was [R. 10333]:

“The Court: The order will provide further that upon the voluntary offer of the officers and directors of the Association and at the request of the United States Attorney, the officers shall file a bond upon the same terms and conditions as the bond usually required under the Federal Home Loan Act and the rules and regulations, and conditioned upon the same terms and conditions, and filed with the Home Loan Bank Board.

Mr. Carter: In the sum of?

The Court: In the sum of one million dollars, the bond to continue until the further order of the Court. The bond in that sum to remain in force and effect and continue until the further order of the Court. In other words, I suppose after you get all through



with the litigation you will want to draw the bond down, in which event you can come into the Court. Is there anything else now? Very well. When do you think that you will be able to get these orders formalized?"

one of the orders thus "formalized" appears at page 8310 to 8328 of the printed record, the other is Appendix Three hereof, p. 319. Clerk's Transcript, page 4712,<sup>4</sup> reads as follows:

(Photostat)

The \$1,000,000.00 bond required by the order of the Court, at the request of the attorneys for appellants, appears at R. 3553. The photostatic copy in the record bears the personal signature and the words "Approved, James M. Carter, U. S. Attorney, 2-9-48," in the handwriting of the then attorney for appellants.

Appellants (who requested of the Court below and received a \$1,000,000.00 bond, filed in Court, with the personally signed approval of their counsel), made general appearance before the Court, and sought general relief as follows:

- (a) An order validating all of the acts of the conservator, which was denied;

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<sup>4</sup>In printing record on appeal, the printer printed the Minute Order only, instead of the formal order bearing the signatures of counsel and the Court. A photostat is therefore inserted herein of such signature page.

Appellant Home Loan Bank Board, through the U. S. Attorney and through its "principal attorney," expressly consented to and approved the order appointing the special master. By so doing, they submitted themselves to the jurisdiction of the Court below by general appearances.



The undersigned hereby consent to and approve the

Foreign Order.

At witness hand and seal

by the Hon. R. H. [illegible] - Attorneys for the Plaintiff  
Petitioners

Charles [illegible] atty. for [illegible]  
Thos. & [illegible], by [illegible]  
attorneys for [illegible]  
[illegible]

James M. Carter  
US ATTORNEY

William F. McKenna  
FOR THE [illegible] BOARD

O. Melvyn & Myers by  
John Whyte  
Attys for child party defendant  
and [illegible] of [illegible]  
Home Loan Bank of Los Angeles

[illegible]  
attys for [illegible]



(b) A special election of directors of the Association which was granted and held under the Court's supervision by the former attorney for appellants, appointed by the Court as special master; and

(c) A \$1,000,000.00 bond, which was granted and is yet on file with the Court below, in full force and effect, which bears the personal approval of the then attorney for appellants;

Notwithstanding which, appellants yet maintain the Court below is completely without jurisdiction over them.

Appellants' submission to the jurisdiction is not limited to the one Court appearance. In the proceedings to bring approximately \$14,000,000.00 in Government Bonds, notes, deeds of trust, and other negotiable securities into the Registry of the Court, appellants' counsel read into the record a telegram, evidencing appellants' approval of the proceedings requiring deposit into Court. It must be remembered that many acts of appellant San Francisco Bank, particularly those having to do with deposit of assets and securities, must be approved by appellants Home Loan Bank Board.

On March 10, 1948, proceedings were being heard before the District Court which resulted in the order requiring deposit of the \$14,000,000.00 which was complied with by appellants San Francisco Bank. The Reporter's Transcript [R. 10404, *et seq.*] reads as follows:

"The Court: Ready in *Mallonee v. Fahey*?

Mr. Carter: May I be heard in this matter? . . .

The Court: . . . Now, Mr. Carter, I think you had something to say.

Mr. Carter: I have had a further communication from the Department which I think should appear

of record here. Following the hearing on Monday I sent them a telegram and received this morning the following:

‘Re your telegram *Mallonee v. Fahey* air mail letter dispatched March 8, stating that it would appear that for the present at least the Home Loan Bank Board does not wish to enter into the current litigation.’

Signed by Morrison, Assistant Attorney General.

In view of that fact, I would like to be excused from this hearing. I can have Miss Martin from my office remain in attendance, and if my presence is needed I will be glad to come down . . .”

No objection is made to the jurisdiction of the Court to granting the relief sought—the interpleader of \$14,000,000.00 into the Registry of the Court.

It is fundamental that a litigant is not permitted to blow hot and cold with the jurisdiction of a Court. To seek affirmative relief from the Court is to submit to the jurisdiction of that Court. Such was the holding of this Honorable Court of Appeals in 1922, in the case of:

*Sterling Tire Corp. v. Sullivan*, 279 Fed. 336;  
Court of Appeals, Ninth Circuit (1922).

Action of replevin in Federal Court to take property from the possession of California State Court receiver. One plaintiff had appeared in the state court receivership action by special appearance and read a telegram into the record. On such special appearance, plaintiff’s attorney demanded, and obtained from the State Court a \$5,000.00 bond in favor of his client in case the receivership was held invalid. Upon the filing of the bond, the State Court denied the motion to vacate the appointment of the re-



ceiver. Another plaintiff likewise made a special appearance before the State Court and resisted a receivership sale. Upon their request, the sale was continued. Federal District Court held that both plaintiffs had submitted to the jurisdiction of the State Court in the receivership proceeding by asking for affirmative relief, in one instance the giving of the receivership bond and the other the continuance of the sale. On appeal, this Honorable Court of Appeals for the Ninth Circuit affirmed and said:

“In our opinion the facts show that plaintiff in error recognized the order appointing a receiver and sought the protection of its rights when, upon motion to discharge the receiver, counsel appeared in its behalf, read his authority to act and moved the state court to order a bond to indemnify his client, and obtained a favorable ruling sustaining his motion. Counsel did not then ask for entry limiting his appearance, and having obtained what he asked for in the way of an indemnity to his client, is not now in a position to contend that he made a special appearance . . .

“Nor do we believe that, when associate counsel for the New Jersey corporation appeared in the later proceeding, the motion of the receiver for instruction and for compensation, counsel’s statement that he appeared ‘specially’ can be held to have been a special appearance. Like the action that had been taken previously by first counsel who appeared, the second appearance was in no way limited to objection to the jurisdiction. In both instances counsel recognized the case in court and actively participated therein. In the one, the bond was prayed for; in the other, counsel sought a continuance of any action

in order to learn the facts and wishes of his New Jersey client. The court evidently considered his suggestions, and counsel signed and approved the order of the court. . . .” (Emphasis added.)

The similarity between our present appeal and the ruling of this Honorable Court of Appeals for the Ninth Circuit in 1922, is startling. In both, a telegram was read to the District Court. [R. 10406.] In both a bond was asked and the District Court granted the request. In the *Sterling* case the bond was \$5,000.00; in our present appeal, it was \$1,000,000.00. In addition, in our present *Mallonee* case, counsel for appellants Home Loan Bank Board asked and received a special election of directors of the Association. Counsel for appellants consented to and approved by signature the order appointing the Special Master to conduct the special election ordered by the Court at appellants’ request. He also asked for an order validating everything appellant Ammann had done as conservator. This appellant did not receive.

In both cases, counsel signed and approved an order of the Court. In our own case, the signature was a consent to the appointment of appellants’ former counsel as special master.

The Court of Appeals for the Fifth Circuit has likewise held that a request for a bond made to a District Court constitutes a general appearance, regardless of whether the bond is ordered by the Court or denied. Such a case is:

*Edgell v. Felder*, 84 Fed. 69 (C. C. A. 5, 1897).

Action in U. S. District Court in Georgia, against New York defendants. After appointment of receiver and issuance of a temporary injunction *ex parte*, New York

defendants entered a special appearance to contest the jurisdiction of the Court and “for the purpose of making a motion to dissolve the injunction and discharge the receiver . . . .”

The injunction had been granted without bond and appellants asked the District Court to require an injunction bond be given for their protection.

District Court denied the motion and held notwithstanding the attempted special appearance, a general appearance had been made by asking affirmative relief. Court of Appeals, Fifth Circuit, affirmed and said:

“ . . . The appellants herein, having appeared in the circuit court, and entered motions to dismiss the suit for want of jurisdiction *ratione personae*, and to dismiss the bill for want of equity, and to dissolve the injunction theretofore issued in the case for want of jurisdiction, and because no previous notice of application therefor was given, and because it was issued in term time, without requiring the complainant to give bond therefor, and that the complainant should execute a bond in such sum as the court might require to protect the defendants against all damages or losses which might be suffered by reason of granting said injunction, and to withdraw the said injunction because issued prematurely, and to discharge the receiver theretofore appointed in the case, must be held to have entered a general appearance to the bill, and thereby waived any privilege they might have had to object to being sued in the district in which the complainant resides, although, by the terms of the writing actually filed with the clerk, the appearance made was a limited appearance . . . .” (Emphasis added.)



Any seeking of affirmative relief (notwithstanding sought as part of a special appearance or while objecting to the jurisdiction) nevertheless is a general appearance and submits the party to the jurisdiction of the Court. The U. S. Supreme Court so held in the case of:

*Merchants, et al. v. Clow*, 204 U. S. 286, 51 L. Ed. 488 (U. S. Supreme Court, 1907).

Plaintiff sued defendant, an Indiana Corporation, in U. S. District Court in Illinois. Service of process was made upon Indiana corporation's local agent in Illinois. Defendant Indiana corporation moved to quash service. District Court denied motion, plaintiffs answered and also pleaded recoupment or set off. The Supreme Court held this was a general appearance and as to the other contentions on the appeal, said:

“We shall intimate no opinion either way, because it is not necessary for the decision of the case, in view of the submission to the jurisdiction which the facts disclose.

“We assume that the defendant lost no rights by pleading to the merits, as required, after saving its rights. (Citing authorities.) But by setting up its counterclaim the defendant became a plaintiff in its turn, invoked the jurisdiction of the court in the same action, and, by invoking, submitted to it. It is true that the counterclaim seems to have arisen wholly out of the same transaction that the plaintiff sued upon, and so to have been in recoupment rather than in set-off proper. But, even at common law, since the doctrine has been developed, a demand in recoupment is recognized as a cross demand, as distinguished from a defense . . . This single fact shows that the defendant, if he elects to sue upon his claim in the action against him, assumes the position



of an actor and must take the consequences. The right to do so is of modern growth, and is merely a convenience that saves bringing another suit, not a necessity of the defense . . .

“There is some difference in the decisions as to when a defendant becomes so far an actor as to submit to the jurisdiction, but we are aware of none as to the proposition that when he does become an actor in a proper sense he submits. (Citing authorities.) As we have said, there is no question at the present day that, by an answer in recoupment, the defendant makes himself an actor, and, to the extent of his claim, a cross-plaintiff in the suit.” (Emphasis added.)

Another Supreme Court decision holding that seeking affirmative relief is a submission to jurisdiction and a general appearance is:

*Texas & P. R. Co. v. Eastin*, 214 U. S. 153, 53 L. Ed. 947 (U. S. Supreme Court, 1909).

Action was originally filed in the State Courts. Appellant defendant petitioned the State Court for removal to Federal Court. The State Court denied the petition for removal and appellant, still protesting the jurisdiction of the State Court and appearing specially, nevertheless attempted to answer and asked the State Court to bring in a new party as defendant, alleged to be liable for the matters the plaintiff charged against appellant.

The State Court granted the bringing in of the new defendant who was held throughout the trial and judgment resulted against appellant in favor of plaintiff and also a lesser judgment in favor of appellant and against the new defendant.

On appeal, appellant contended denial of removal was erroneous and that the State Court was therefore without jurisdiction. The Supreme Court held appellant had submitted himself to the jurisdiction of the State Court by asking affirmative relief and said:

“ . . . petitioner may stay in the state court and defend the action against him, and, if the judgment go against him, bring the case to this court, and have the question of removal determined. But plaintiffs in error did not defend only against the cause of action. They instituted a cause of action against the St. Louis & San Francisco Railroad Company, in which the defendant in error had no concern, and recovered a judgment against that company in the sum of \$1,800. By doing so they invoked the jurisdiction of the state court on their own account and for their own purpose, and the case is brought within the ruling in *Merchants' Heat & Light Co. v. J. B. Clow & Sons*, 204 U. S. 286, 51 L. Ed. 488, 27 Sup. Ct. Rep. 285.” (Emphasis added.)

Any form of affirmative relief sought from the Court constitutes a general appearance. Such was held in the case of:

*Feldman v. Conn. Ins.*, 78 F. 2d 838 (C. C. A. 10, 1935).

Foreclosure proceedings based upon a confession of judgment. Appellant had stipulated in writing for a continuance upon condition that at the end of 90 days, judgment might be entered if certain payments were not made. After entry of judgment, appellant appeared by new counsel “specially” seeking to vacate the judgment and foreclosure sale.

District Court refused to vacate the judgment and the Court of Appeals, Tenth Circuit, affirmed, holding that a party seeking affirmative relief submits to the jurisdiction of the Court and thereby makes a general appearance regardless of how the appearances may be denominated, special or otherwise.

The Court of Appeals said:

“ . . . The filing of an application or stipulation for an extension of time within which to answer or otherwise plead constitutes a general appearance . . . (citing authorities). And the filing of an offer to confess judgment constitutes a like appearance . . . (Citing authorities) . . .

“ . . . (4) Apart from what has been said, the motion to set the decree aside and the motion to vacate the sale constituted a general appearance. While it was attempted to appear specially, seeking affirmative relief at the hands of the Court in the manner and circumstances stated, constituted a general appearance and waived all question respecting the jurisdiction of the Court over the person of the defendant at the time the decree was entered. (Citing authorities.)” (Emphasis added.)

Indispensable parties by seeking affirmative relief even before a special master of the Court, thereby submit themselves to the jurisdiction and make a general appearance, regardless of whether they have ever been



served or summoned or previously named as parties to the suit. Such was held in the case of:

*Alexander v. Hillman*, 296 U. S. 222, 80 L. Ed. 192 (U. S. Supreme Court, 1935).

The Supreme Court said:

“We come to the question whether the court has jurisdiction of the persons of respondents in respect of the counterclaims . . . But petitioners insist that by presenting their claims respondents submitted themselves to the jurisdiction of the court to grant affirmative relief on the causes of action alleged against them . . .

“Respondents’ contention means that, while invoking the court’s jurisdiction to establish their right to participate in the distribution they may deny its power to require them to account for what they misappropriated . . .

“By presenting their claims respondents subjected themselves to all the consequences that attach to an appearance, §51 to the contrary notwithstanding. (Citing cases.)” (Emphasis added.)

If the Court below was without jurisdiction, as appellants now contend, they have voided by their own act the million dollar bond filed with the Court at their request. Had the Court granted their motion and made an order validating every act of appellant Ammann as conservator, would appellants now contend the Court was without jurisdiction and such order was void?

Appellants must not be permitted to speculate the outcome of the Court’s decisions, to blow hot and cold, and to decide that the Court has jurisdiction if they obtain all the relief they ask, but that the Court does not have



jurisdiction if they are denied any of their numerous requests.

Regardless of general appearance the Court had jurisdiction *in rem* over the \$70,000,000.00 of seized assets.

### THE COURT HAS JURISDICTION UNDER 118.

The actions are in the nature of quiet title and replevin to recover physical possession and ownership of \$150,000,000.00 real and personal property, located physically within the district of the Court below, and \$14,000,000.00 of which is physically in the registry of such Court in the possession of its clerk. [R. 22-25, 354-358, 3088-3094, 3333-3339.]

The possession and title to such real and personal property has been transferred and clouded by a series of administrative orders alleged by appellees, plaintiffs to be, either or both void and voidable. [R. 2974-2982, 3193-3194.] Review of such orders was sought by recovery of possession and title to such real and personal property and quieting such title and possession against any further interference or harassment under such void or voidable administrative orders.

The nature of the action is decisive of both venue and jurisdiction which must be where the real and personal property involved is physically situated.

### ORDERS REVIEWABLE.

Such action does not require personal jurisdiction over any defendant. (However such personal jurisdiction does exist over all appellants as hereinelsewhere set forth.)

The Court below, within whose district was situated the \$150,000,000.00 of real and personal property, has

jurisdiction to review such administrative orders, as they affect ownership and title to such real and personal property. Such jurisdiction existed prior to and independently of the Administrative Procedure Act. (See section of this brief pages 205 to 235, "Orders Are Reviewable.")

In addition to such inherent jurisdiction, the Administrative Procedure Act expressly confers jurisdiction on the Court below to review such administrative orders affecting title to, and possession of real and personal property.

(a) The Administrative Procedure Act, Title 5, U. S. C. A., Section 1009, Subdivision (a), reads in part:

“ . . . RIGHTS OF REVIEW. Any person suffering legal wrong because of any agency action, or adversely affected or aggrieved by such action within the meaning of any relevant statute, shall be entitled to judicial review thereof.”

Subdivision (c) defines reviewable acts:

“Every agency action made reviewable by statute and every final agency action for which there is no other adequate remedy in any court shall be subject to judicial review.” (Emphasis added.)

Subdivision (b) provides:

“The form of proceeding for judicial review shall be any special statutory review proceeding relevant to the subject matter in any court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action (including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus) in any court of competent jurisdiction. . . .”

The effect of the administrative orders sought to be reviewed is controlling as to the Court “. . . of competent jurisdiction . . .” to review such orders.

The Court's review of “agency action” has been in progress for nearly five years. It has been, or now is, the subject of fifteen (15) court proceedings, including two (2) in the U. S. Supreme Court and seven (7) in this Honorable Court of Appeals. (See description of the litigation, pages 1 to 4, this brief.)

The five administrative orders being reviewed were of peculiarly local effect. [R. 8225, Ftn. 5; R. 8229, Ftn. 6; R. 8231, Ftn. 7.] They directly transferred title to and possession of real and personal property situated in California. The orders being reviewed were all final.

Three of the orders, 5082, 5083 and 5084 [R. 8225-8228, Ftn. 5] dated March 29, 1946, purported to instantaneously liquidate, merge, and dissolve the solvent and growing appellee Federal Home Loan Bank of Los Angeles, and its \$46,000,000.00 in assets, including a surplus of approximately \$1,900,000.00 [R. 3194], and at the same time to instantaneously create appellant San Francisco Bank: all without notice, hearing or trial, and without the consent and against the will of the stockholders of all Federal Home Loan Banks concerned. [R. 4571-4572; Clk. Tr. 14526-14528; Movant's Ex. No. 10.]

The immediate effect of such orders, if valid, was to transfer from appellees to appellants, physical possession, ownership and title to the thousands of notes, deeds of trust, U. S. Government bonds, and other negotiable securities, bank deposits and cash, comprising the \$46,000,000.00, all of which were physically situated in the City of Los Angeles, California, within the territory of the Court



below. [R. 9466.] Enforcement of said orders placed appellants in possession of said securities, bonds and cash, and apparently vested appellants with title thereto. This title was assigned and transferred by appellants in multi-million dollar amounts in daily reoccurring transactions, one of which in particular became the immediate concern of the Long Beach Association. [R. 6.]

This was the transaction wherein \$7,300,000.00 of such seized Los Angeles Bank assets were assigned and transferred by appellants' San Francisco Bank, *et al.*, to appellant Ammann, as purported conservator of the Long Beach Association. [R. 6761.]

Fifty-two days after his confiscation of the Los Angeles Bank, Ammann seized the Long Beach Association without order or process whatsoever. [R. 3194.] As authority for his seizure, he signed his own name certifying his own appointment, without notice, hearing or trial, as purported conservator, and with threats of criminal prosecution if said order was resisted, completed his seizure of the \$26,000,000.00 of Long Beach Association assets. [R. 3210-3212.] Ammann refused to give any receipt or acknowledgment whatsoever for any of the cash negotiable securities and bearer government bonds or other assets thus seized. [R. 3212.]

Ammann attempted to obligate the seized Long Beach Association to appellants' San Francisco Bank, created fifty-two days previously by similar seizure in which appellant Ammann participated and certified the seizing orders.

Appellant Ammann transferred to appellant San Francisco Bank several thousand notes and trust deeds, aggregating approximately \$12,000,000.00. These notes and



ORDINARY

NOT DESTROY THIS NOTE: When paid, this note, with Deed of Trust securing same, must be surrendered to trustee for cancellation, before reconveyance will be made.

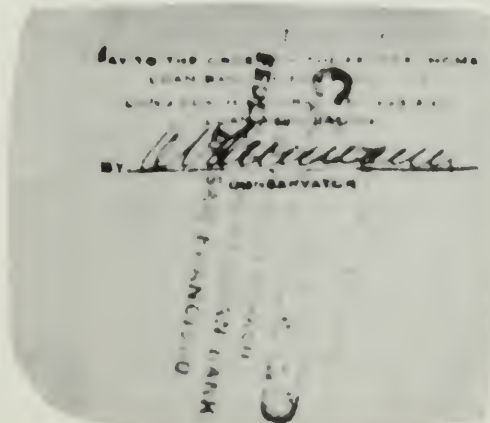
Note Secured by Deed of Trust

\$ 400.00, California, 1943  
In installments and at times hereinafter stated, for value received, I promise to pay to \_\_\_\_\_ each  
\_\_\_\_\_ or order,  
at \_\_\_\_\_  
the principal sum of \_\_\_\_\_ DOLLARS  
with interest from \_\_\_\_\_, 19\_\_\_\_ on unpaid principal at the  
rate of six \_\_\_\_\_ per cent per annum; principal and interest payable in monthly installments  
each, on the \_\_\_\_\_ day of each month, beginning on the \_\_\_\_\_ day of \_\_\_\_\_  
and continuing until said principal and interest have been paid in full.

Each payment shall be credited first on interest then due and the remainder on principal; and interest shall thereupon cease upon the principal so credited. Should default be made in payment of any installment when due, or in the performance of any agreement in the deed of trust securing the payment of this note, the whole sum of principal and interest shall become immediately due at the option of the holder of this note and shall, at the option of said holder, bear interest during the period of such default at the rate of 8 per cent per annum. Principal and interest payable in lawful money of the United States. If action be instituted on this note, I promise to pay such sum as the court may fix as attorney's fees. The holder hereof agrees to accept additional payments, provided, however, that should the amount prepaid equal or exceed 20 per cent of the original amount of the loan, 90 days unearned interest on the amount so prepaid may be charged as a bonus.

This note is secured by DEED OF TRUST to TITLE SERVICE COMPANY, A California corporation.

Raymond L. Hunter  
Edna H. Hunter





trust deeds were the property of the Long Beach Association, custody of which had been seized by Ammann. [R. 3224.]

The transfer of the \$12,000,000.00 of Long Beach Association trust deeds to the San Francisco Bank was by endorsement of an absolute assignment on each of the several thousand in notes. The endorsement was made by an undated, unauthenticated rubber stamp signed by Ammann as conservator of Long Beach Association. [R. 3257-3258; see Plate 4.]

Notwithstanding such assignments, he continued to accept the monthly and other payments upon said notes and deeds of trust after such assignment of title and delivery of possession by him. [R. 3258-3259.] Thereby, he made every homeowner whose real property and deed of trust thereon were seized, assigned and conveyed in either or both seizure, proper parties to any action to determine the validity of either (a) the seizure, liquidation or dissolution of the \$46,000,000.00 Los Angeles Bank; or (b) the attempted confiscation of the Long Beach Association. All title claimed by appellant Ammann, transferred by him to appellant San Francisco Bank, and involved in his other multi-million dollar transactions with the seized Long Beach Association assets, is based upon this order of seizure, signed by appellant Ammann himself.

Seizure of possession of the premises of the Los Angeles Bank likewise placed appellants in possession and control of the millions of dollars of negotiable government bonds, notes and deeds of trust, entrusted to the Los Angeles Bank by its customers for safekeeping only. Among such seized safekeeping assets was \$8,300,000.00 of U. S. government bonds owned by the Long Beach Association

which was not indebted to the Los Angeles Bank, or any other Federal instrumentality in any amount whatsoever.

After twenty months in possession of said association, following the 1946-47 proceedings before the United States Supreme Court and during the pendency of two earlier appeals before this Honorable Court of Appeals for the Ninth Circuit appellants rescinded the appointment of Ammann as conservator. This was Order No. 388 dated January 17, 1948, which removed appellant Ammann as conservator required him to return what remained of the \$26,000,000.00 in assets which he had seized and required him to account to the Court below for his dealings with such seized assets. [R. 8231, Ftn. 7.]

Such order, by its terms, required that a certified copy thereof be filed with the Court below, and that the accounting required of appellant-defendant Ammann be likewise filed with the Court below. Both such order and Ammann's attempt at such accounting were so filed. [R. 8614-8742.] Because appellants desired to amend and supplement their accounting, it was returned without being printed from the Clerk of the Court of Appeals to the Clerk of the District Court, so as to be available for proceedings.

Two of the administrative orders being reviewed thus affected the seizure and relinquishment of the Long Beach Association and its \$26,000,000.00 in assets.

Order No. 388 as did its four predecessors, affected the title and possession of millions of dollars and assets of appellee Long Beach Association. However, because of the \$10,000,000.00 run of withdrawals caused by appellant Ammann, and his multi-million dollar transactions with seized Long Beach Association's assets, the Association,



when returned by appellant Ammann, was almost without assets. [R. 3562.]

All five of these administrative orders purported to be final and conclusive on their face. They affected, and were operative upon, the real property of thousands of California citizens, residents within the district of the Court below. Any Court asked to review any one or more of these five administrative orders, and determining their validity or effect, must of necessity, have *in rem* jurisdiction over the real and personal property involved in order to make an adjudication binding upon such property.

In March of 1948, when the progress of the review of all five of said final administrative orders, had progressed for two years, the Court below made an order requiring deposit into the registry of the Court of approximately \$14,000,000.00 of assets. [R. 8399.] The order was made for the purposes of preventing through the remaining years of litigation, the necessity for homeowners whose titles had been clouded by the seizures and multi-million dollar transfers and assignments of the seized assets of the Los Angeles Bank and the cross-assigning of the seized assets of the Long Beach Association. [R. 8399.]

Such order was complied with by appellants. No appeal was ever taken therefrom and it has long since become final. Among findings of said order are [R. 8409]:

“That pending final judgment and decision of the various issues of the within consolidated actions neither said Long Beach Federal Savings and Loan Association, alone, nor said Federal Home Loan Bank of Portland, sometimes known as Federal Home Loan Bank of San Francisco, alone, nor said Federal Home Loan Bank of Los Angeles, alone, nor any of the parties to this action can, without the aid and

assistance of this court, make, execute and deliver to the said borrowers and homeowners an effective release, reconveyance and discharge of their real property."

" . . . That among the injuries which would flow to said homeowners, and borrowers and purchasers by failing to require such deposit pending the final judgment in the within action, are (1) the inability of said thousands of borrowers and homeowners to secure a merchantable, or insurable title to the particular real property involved, which in turn would prevent either a sale thereof, or a loan or refinancing thereon, or a payment and termination of the interest and obligations of the present loans and deeds of trust thereon, and (2) a multiplicity of suits which might involve all of the issues raised, or which can be raised, in the instant litigation, and all of the parties to the present litigation; which injuries and damage are found to be grave, irreparable and continuing as to the thousands of borrowers and homeowners who have given their notes and deeds of trust to said Long Beach Federal Savings and Loan Association and conveyed the titles to their homes as security for said loans.

[R. 8412.] "That by custom and usage in the County of Los Angeles, State of California, policies of title insurance are required for marketable and merchantable title to real property to be sold, encumbered or conveyed in said County and State.

"That if such payment by said Long Beach Federal Savings and Loan Association of said sum to be made to one of said conflicting claimants to the exclusion of the other, and the other claimant thereafter would be held to have been entitled to such payment, then the owners of the various properties

under trust deeds may each be subjected to claims upon their notes and property for a portion of such total liability, which possible liability exists as a cloud upon the title to each of the thousands of properties involved and prevents each of them from securing a merchantable and insurable title, unless the within Order is made. That the making of the within Order thus avoids the complex, multiple and conflicting claims and demands which may be made upon the approximately 8,000 individual borrowers of said Association.” [R. 8410-8412.]

These findings have become final for three years for lack of appeal therefrom. Present appellants complied with the requirements of that order of the District Court, now almost three years old, yet they contend that this District Court, within whose territory was situated all of the thousands of parcels of real properties, was completely without jurisdiction to take the action which cleared the titles to the homes of the thousands of innocent borrowers whose only part in this litigation was that they had loans on their homes, obtained from one or more of the institutions seized and confiscated by the appellants or their predecessors.

Appellants contend by this appeal that the Court below could not prevent them by preliminary injunction from again clouding the titles to the thousands of homeowners, as the same were clouded in the first two years of this litigation.

Only a Court having within its territorial jurisdiction the real and personal property involved in these seizures can effectively adjudicate in one proceeding, the right and liability of all of the parties affected by such seizure and



inter-dealing between the two seized institutions of the multi-million dollar amounts of assets, possession and title to which was obtained by such seizure.

Appellants admit that they obtained possession of the \$46,000,000.00 of assets in the Los Angeles Bank and the \$26,000,000.00 of assets of the Long Beach Association. [R. 4057-4058.] Title to the assets of both institutions was claimed by appellants through the five (5) administrative orders and by the transfers and assignments of the seized assets thereunder. The determination of the validity of the title thus asserted requires that the Court have jurisdiction over the assets themselves, in order to make an adjudication binding upon all of the claimants of such title and possession.

The only Court capable of such adjudications is the U. S. District Court for the Southern District of California, before whom this litigation has been pending for almost five years.

The District of Columbia District Courts might have jurisdiction over Fahey, Divers and Adams, etc., but could enforce no jurisdiction over the thousands of homeowners, the thousands of depositors in the Long Beach Association, the 176 association stockholders of the seized Los Angeles Bank, the 300 associations presently stockholders of the purported San Francisco Bank (if it exists), the Title Service Company, trustee of the homes of the 8,000 borrowers from the Long Beach Association notes and trust deeds, seized by Ammann and assigned to the San Francisco Bank. The District of Columbia District Court could have no jurisdiction over the title to the thousands of parcels of real property situated in Los



Angeles County, California, nor to the title, or possession of the \$46,000,000.00 of seized Los Angeles Bank assets. or the \$26,000,000.00 of seized Long Beach Association assets.

Any adjudication made by the District of Columbia Federal Court would have no binding effect on appellant San Francisco Bank, whose principal place of business was San Francisco, California, nor of any of the hundreds of other parties to this litigation in the Court below.

The only parties objecting to the jurisdiction of the Southern California U. S. District Court are those, Fahey, Divers, Adams and LaRoque, who purported to authorize or ratify the seizure of possession and title to real and personal property in California, and who attempted through their representatives to physically seize such possession from California citizens and transfer the seized possession together with the title and ownership, to others yet within the State of California.

To hold that these actions must be brought in Washington, D. C., is to deny all effective relief.

Appellants San Francisco Bank and Ammann are both objecting to the jurisdiction of the Southern California U. S. District Court within whose jurisdiction they were physically served with process and summons [R. 41, 9506-9507], and into whose Registry they have deposited assets aggregating approximately \$14,000,000.00.

If the action were brought at Washington, D. C., in the District of Columbia District Court, Ammann the conservator, in possession of the seized Long Beach assets and San Francisco Bank in possession of the seized Los Angeles Bank assets, could rightfully object that the

Washington, D. C., Federal Court had neither jurisdiction over them personally, nor jurisdiction *in rem*, over the seized real and personal property. Any adjudication by the Washington, D. C., Courts would be completely ineffective to remove from the San Francisco Bank the \$46,000,000.00 in seized Los Angeles Bank assets or to recover the \$26,000,000.00 in seized Long Beach Association assets.

The problems thus presented, the adjudication of, possession of, and title to, real and personal property, are solved if action is brought before a Court which has *in rem* jurisdiction over such property within its district. Such jurisdiction can arise only from the physical situation of the real and personal property, within the territory of the District Court.

The Court below found in an order made March 13, 1948 (from which no appeal was ever taken) [R. 8412-8524], as follows:

“That all of the assets, and properties, herein described, notes, deeds of trust, United States Government Bonds, and other collateral are physically within the confines and boundaries of the Southern District of California and are thus physically within the jurisdiction of this Court. That all of said four notes (Exhibits “F,” “G,” “H,” and “I” of the said Noon Affidavit) are payable at the branch office of the said San Francisco Bank in the City of Los Angeles, County of Los Angeles, State of California. That all of the thousands of notes and deeds of trust hereinafter specifically described are payable at the offices of the Long Beach Federal [12180] Savings and Loan Association, in the City of Long Beach, Los Angeles County, California. That all of the thousands of parcels of real property, homes of the bor-

rowers of Long Beach Federal Savings and Loan Association specifically described in said deeds of trust herein elsewhere described in detail are situated within the confines of the Counties of Los Angeles and Orange, State of California, all physically within the boundaries of the Southern District of the said United States District Court.

“That all of the United States Bonds hereinafter specifically described are physically located at the Los Angeles Branch of the Federal Reserve Bank of San Francisco, in the City of Los Angeles, County of Los Angeles, State of California, within the confines of, and boundaries of, the United States District Court for the Southern District of California.

“That each and all of the things, documents, notes, bonds, securities, properties, trust deeds and collateral herein required to be deposited are within the physical custody, control and/or possession of the said Frank C. Noon, as Los Angeles Branch Manager of the said San Francisco Bank, and are within the ability and power of said San Francisco Bank to deliver in compliance with this Order.

“That there is already on deposit in the Registry of this Court and within the custody, jurisdiction and control of this Court, a sum in excess of \$1,500,000.00 in cash, heretofore deposited as a result of numerous individual intervenors, seeking the aid of this Court, in the clearing of the encumbered and clouded titles to their homes.”

Each of these findings have become final from lack of appeal therefrom, or from dismissal of prior appeals therefrom.

The fact that certain of the defendants acting upon, or claiming the right to make, administrative orders affect-



ing the title to, or possession of, such real and personal property, may be absent from the district of the Court having *in rem* jurisdiction of the real and personal property, presents no obstacle.

The authority of Courts to adjudicate ownership and possession of real and personal property within their territorial limits is as old as the Anglo-Saxon system of jurisprudence. Such authority in the Federal Courts was recognized in the early United States statutes, was embodied in Title 28, Section 118 (until 1948 and was re-enacted in new Title 28, Section 1655). When these actions were commenced in 1946, Section 118, Title 28, U. S. C., read in part:

“When in any suit commenced in any district court of the United States to enforce any . . . claim to, or to remove any incumbrance or lien or cloud upon the title to real or personal property within the district where such suit is brought, one or more of the defendants therein shall not be an inhabitant of, or found within, the said district, or shall not voluntarily appear thereto, it shall be lawful for the court to make an order directing such absent defendant or defendants to appear, plead, answer, or demur by a day certain to be designated, which order shall be served on such absent defendant or defendants, . . . WHEREVER FOUND, and also upon the person or persons in possession or charge of said property, if any there be; . . . In case such absent defendant shall not appear, . . . it shall be lawful for the court to entertain jurisdiction, and proceed to the hearing and adjudication of such suit in the same manner as if such absent defendant had been served with process within the said district; but said adjudication shall, as regards said absent defendant or defendants without

appearance, affect only the property which shall have been the subject of the suit and under the jurisdiction of the court therein, within such district; . . . .”  
(Emphasis added.)

Pursuant to this section, service of summons and complaint was immediately made upon appellant Ammann at Long Beach, California, as the “person in possession or charge of such property.” [R. 41.]

He was also served with a certified copy of a temporary restraining order issued by the District Court at Los Angeles within whose territory defendant Ammann was found and the assets were situated. The order provided in part:

“It Is Hereby Ordered that the defendants and each of them be, and they are hereby enjoined and restrained from and of making, attempting to make, or instituting any merger, consolidation, reorganization of said Long Beach Federal Savings and Loan Association, and from and of making any transfers, assignments, conveyances of any and all of the assets thereof, which might effect or bring about such merger, consolidation and/or reorganization, and from and of uniting, commingling, joining or consolidating the securities, assets, cash, resources, properties, membership shares of said Association, with those of any other association, bank, corporation, organization or institution whatsoever, without the order of this Court so to do first being had and obtained.”

Shortly thereafter, a *lis pendens*, covering 256 pages of legal descriptions and referring by title and case number to this litigation, was recorded in the Office of the County Recorder in Los Angeles County, California, wherein was

situated most of the real property, security for the thousands of notes and deeds of trust seized by appellant Ammann. [R. 8286.]

*In rem* jurisdiction in a local action to determine title and possession to real and personal property within the territory of the District Court below was thus conclusively established.

The person in possession was personally served within the district. By *lis pendens*, the world was notified of the pendency of the action affecting the thousands of homes of the borrowers. At this time, in May of 1946, appellant Fahey, the one-man "Home Loan Bank Board," called himself the "Federal Home Loan Bank Administration." He was the only non-resident defendant in the local action.

Application was made to the District Court and an order obtained for the service of summons and complaint, together with a copy of such order of Court upon the absent defendant Fahey at Washington, D. C. [R. 65-66, 66-67, 81-82, 9502-9503, 9507-9508.]

Service of such summons, complaint and order, was made by the U. S. Marshal in the District of Columbia and return of such service filed with the District Court for the Southern District of California. Full compliance with Section 118, of Title 28, U. S. C., was thus made by plaintiffs. [R. 795-804.]

When appellant Fahey was removed as the one-man Home Loan Bank Board, his successors were substituted as defendants by appropriate proceedings before the Court below [R. 2771], and as various changes in the membership of the reorganized Home Loan Bank Board occurred, further substitutions were similarly made before the Court below. [R. 4335, 4340, 4349-4358, 4547.]



Notices of such substitutions were given as required by order of the Court below, prescribing the time and manner of such notice. [R. 4342-4356, 2543-2557.] Appellants were represented by counsel at all such substitutions and made no objections thereto.

The finding "That the Court has jurisdiction of the persons and subject matter involved" was in the order of the Court below of April, 1947 [R. 2355], against which appellants petitioned the U. S. Supreme Court for a writ of prohibition, mandamus and/or injunction. The writ was denied in *Ex parte Fahey*, 332 U. S. 258, 91 L. Ed. 2041, after which the Court below, on September 2, 1947, signed the order. Appellants immediately applied to this Honorable Court of Appeals for a stay and after printed briefs and argument, this Court of Appeals denied the stay.

Shortly thereafter, appellants dismissed their appeal from the order containing such finding. Notwithstanding this state of the record, appellants on this appeal again attack the jurisdiction of the Court below and claimed that findings contained in the preliminary injunction on the matter of jurisdiction are "without any support in the evidence or are erroneous as a matter of law." (Appellants' Brief, page 23, Specification 13.)

Who are the non-resident defendants not served within the jurisdiction?

Appellants have devoted much of their brief to attacks upon the action being maintained against non-resident defendants not served within the district. They carefully avoid naming this class, none of whom is appealing. Certainly one appellant cannot attack matters of no concern to that appellant.

The only non-resident appellants not served within the district, are Divers, Adams and LaRoque. They made a general appearance before the Court by Resolution No. 388, which required by its terms, that a certified copy be filed with the Court. They did not appeal from the judgment entered upon such general appearance, which by their own brief, they admit was a final judgment. (See App. Br. pp. 34 and 82.)

The only other non-resident appellants, Bramley and Ammann, were served within the jurisdiction.

Appellant Federal Savings and Loan Insurance Corporation, a corporation doing business within the State of California, is not a non-resident, nor is this a matter which can be settled short of a trial. The allegations in the pleadings that the corporation is doing business in California are denied. Whether or not an insurance corporation guaranteeing the safety of the savings of the 16,000 shareholders and seeking its own appointment as receiver at Long Beach, California, can claim to be immune from the process of the Court, whose judgment is thus to be violated, is a matter which should not be determined on a preliminary injunction. (See Section I of this brief.)

It is significant that the officers and directors of the San Francisco Bank who are not appellants in this appeal, sought their independent remedy by way of a writ of prohibition, mandamus, etc., application for which was lodged with this Honorable Court of Appeals in February of 1950 and leave to file the petition for the writs was denied by this Honorable Court of Appeals in June of 1950.

The claim for damages was made in the action for the first time after the so-called non-resident defendants had made their general appearances.

The claims were raised by an amendment to the then pending pleadings, made by direction of the trial court, that the Association set forth all further matters necessary to a trial of the action on the matters remaining after the removal of the conservator and the restoration of the Association to its founding management. [R. 3764.]

After the general appearances and the submission to the jurisdiction of the Court, to have failed to file the damage claims against the personally appearing defendants, would have been, under the doctrine of compulsory counter-claiming prevailing in the Federal practice, a waiver and abandonment by the Association of such damage claims. The Association withheld the filing of action upon conservator Anmann's \$100,000.00 bond until the last possible moment because the Association was relying upon the then pending negotiations for settlement and a compromise of the entire controversy.

Section 118 of Title 28, U. S. C., as it existed in 1946, was the subject of interpretation by the Eighth Circuit in 1928 in the case of:

*Omaha Nat. Bank of Omaha, Neb. v. Federal Reserve Bank of Kansas City, Mo., et al.*, 26 F. 2d 884 (C. C. A. 8, 1928).

The opinion reads in part as follows:

“(1) This suit was brought under section 118, title 28 U. S. C. A. (Judicial Code paragraph 57), by the Omaha National Bank of Omaha, Nebraska, against FEDERAL RESERVE BANK OF KANSAS CITY, MISSOURI,



Wyoming National Bank of Casper, Wyoming, First National Bank of Cheyenne, Wyoming, and T. E. McClintock, receiver of the First National Bank of Cheyenne, Wyoming, and was dismissed on the ground that the court was without jurisdiction. That section deals with local actions or suits, and there are two indispensable requirements to give the court jurisdiction: (1) The complaint must show that the subject-matter, the *res*, is within the territorial jurisdiction of the court, and (2) there must be diverse citizenship and residence between the plaintiff and all defendants who are necessary parties; and it does not matter that plaintiff is or is not a citizen and resident of the State in which the suit is brought. Its purpose is to enable him to obtain a judgment or decree that will bind the res, though the defendants are all nonresidents and cannot be personally bound unless they enter general appearance or should be served within the district."

"(5) . . . it is contended that the facts pleaded show only a paper transaction, which did not create or bring under the court's jurisdiction any personal property within the meaning of section 118, that the section contemplates some specific tangible thing, that here no money passed, no particular fund was created, only book entries were made at plaintiff's direction in the Omaha Branch bank, and there is no *res* in the State and district of Nebraska which can be adjudged upon and disposed of by the court. It would be hard to convince men who devote their time to business and financial transactions that there is any merit in the contention. As proof to the contrary, and as a matter of common knowledge, the \$60,000 will be handed over at the Branch bank's counter on proper orders to him who is entitled to it. In every practical and business sense the \$60,000 is there, and it is a sacrifice

of substance to form to say it is not. For remedial purposes on plaintiff's bill we think the situs of any property interest in the transferred deposit was at Omaha. In *C. R. I. & P. Ry. Co. v. Sturm*, 174 U. S. 710, 19 S. Ct. 797, 43 L. Ed. 1144, it was held . . . that the situs of a debt was with the debtor. The court said:

“‘This is a legal necessity, and considerations of situs are somewhat artificial. If not artificial, whatever of substance there is must be with the debtor. He and he only has something in his hands. That something is the *res*, and gives character to the action as one in the nature of proceeding *in rem* . . . Of course, the debt is the property of the creditor, and because it is, the law seeks to subject it, as it does other property, to the payment of his creditors. If it can be done in any other way than by process against and jurisdiction of his debtor, that way does not occur to us.’

“The same proposition is learnedly discussed and a like conclusion reached in *McBee v. Purcell Nat. Bank*, 1 Ind. T. 288, 37 S. W. 55. Corporate shares represent the owners' right to a pro rata interest in corporate assets that may never be parceled among shareholders. The right as property, though intangible, is real, and is personal property within the purpose and meaning of this section. *Jellenik v. Huron Copper Mining Co.*, 177 U. S. 1, 20 S. Ct. 559, 44 L. Ed. 647. It was there said, on the contention that the statute had reference only to tangible personal property; ‘This would be too narrow an interpretation of the statute.’ See also *Citizens' Sav. & Tr. Co. v. Ill. Cent. R. R. Co.*, 205 U. S. 46, 27 S. Ct. 425, 51 L. Ed. 703; *Franz v. Buder* (C. C. A.) 11 F. (2d) 854; *Norrie v. Lohman* (C. C. A.), 16 F. (2d) 355. In *Goodman v. Niblack*,

102 U. S. 556, 26 L. Ed. 229 . . . Goodman  
. . . sued pursuant to the terms of this section as  
it stood prior to the amendment of March 3, 1875  
. . . In holding that the suit was maintainable  
Mr. Justice Miller, speaking for the court, said of  
this section:

“ ‘This is a proceeding in equity to enforce a lien  
on the fund which is within reach of the court, and  
as the trustee and complainant have the requisite  
citizenship, section 738 of the Revised Statutes (28  
U. S. C. A. §118) provides a remedy . . . If  
they appear, the suit will proceed as usual. If they  
do not appear, the decree, so far as it affects the  
fund in the hands of Niblack, will bind them; and  
this is all that is necessary to give the court juris-  
diction to grant the relief prayed for by the com-  
plainant . . . ’

“ . . . Accepting the allegations as stating the  
true facts, we think the \$60,000 transferred to the  
credit of Wyoming National Bank in the Omaha  
Branch Bank was personal property within the  
court’s jurisdiction, to which plaintiff asserted an  
equitable claim and title, and in that respect the suit  
was one properly brought under section 118 . . . ”

In our present appeals the Court found that there are  
\$8,500,000 of notes and deeds of trust all payable at the  
premises of the Long Beach Association, within the ter-  
ritory of the District of the U. S. District Court for  
the Southern District of California. That the debtors  
(the borrowers from Long Beach Federal) reside within  
the County of Los Angeles, which is within the territory  
of the said U. S. District Court for Southern California.  
[R. 8402.]



The District Court found in its order of March 13, 1948, (*from which no appeal was ever taken*), requiring the deposit into the Registry of the Court of approximately \$14,000,000.00 of such notes, deeds of trust, and government bonds, as follows:

“That in the transactions between the said defendants A. V. Ammann, purportedly acting as conservator for said Long Beach Federal Savings and Loan Association, and the defendant Federal Home Loan Bank of Portland, sometimes also known as the Federal Home Loan Bank of San Francisco, the said defendant A. V. Ammann, by written assignments on separate documents describing said thousands of deeds of trust, and by assignments upon the backs of each of the original notes therein concerned attempted to assign and transfer or pledge said thousands of notes and deeds of trust securing the same in which Long Beach Federal Savings and Loan Association was named as beneficiary.

“That each of said deeds of trust securing said notes conveyed the legal title of a separate piece of real property which was the home of a borrower of Long Beach Federal Savings and Loan Association to defendant Title Service Company, or to other corporations, as trustee to secure the payment of sums of money borrowed by said borrower from said Long Beach Federal Savings and Loan Association upon the terms and conditions set forth in said notes and deeds of trust thus purportedly assigned and transferred by defendant Ammann to defendant, said San Francisco Bank.” [R. 8409.]

“ . . . That all of the thousands of notes and deeds of trust hereinafter specifically described are payable at the offices of the Long Beach Federal Savings and Loan Association, in the City of Long

Beach, Los Angeles County, California. That all of the thousands of parcels of real property, homes of the borrowers of Long Beach Federal Savings and Loan Association specifically described in said deeds of trust herein elsewhere described in detail are situated within the confines of the Counties of Los Angeles and Orange, State of California, all physically within the boundaries of the Southern District of the said United States District Court.”  
[R. 8413.]

In the same Order R. 8421, the trial court gives in detail serial numbers of each of the \$5,300,000.00 aggregate total of U. S. Government bonds, and on pages 8423 to and including 8518, for a total of 95 printed pages, of record, the Court in its order describes the amount of the deeds of trust, the date of their execution, the name of the borrowers, the name of the trustee, the date of recordation and the book and page of recordation in the office of the County Recorder of Los Angeles County, California, of the \$8,500,000.00 of such notes and deeds of trust affected by such order of the District Court.

Appellant San Francisco Bank, pursuant to the terms of this order, delivered into the registry of the Court each of the thousands of notes and deeds of trust therein described, and each of the \$5,300,000.00 in United States government bonds, the serial numbers of which were described in such order, and no appeal was ever taken from those findings of fact, made after contested hearing extending over several days with the vice president of appellant San Francisco Bank, one of the witnesses.

The *Omaha Bank* case, above quoted, holds that the situs of a debt is the place of residence of the debtor. The above findings demonstrate that as to \$14,000,000.00 of the \$26,000,000.00 of Long Beach assets in issue in this litigation were physically within the registry of said Court, in the custody of its clerk. [R. 8268-8269.]

Among the issues in this litigation is the ownership and voting rights of stock in whichever of the Federal Home Loan Banks of Portland, San Francisco or Los Angeles, are found by the Court to be in existence. The Preliminary Injunction, the subject of the present appeal, was granted by the Court below to preserve the *status quo* pending its decision of that (and other issues) to be decided on the trial on the merits. The Court of Appeals, Seventh Circuit, considered the jurisdiction of a District Court to enjoin non-resident defendants under identical circumstances in the case of:

*Harvey v. Harvey*, 290 Fed. 653 (C. C. A. 7, 1923).

Action brought in U. S. District Court in Wisconsin against defendants, who were residents of Ohio to adjudicate title to stock in Wisconsin corporation which had its principal place of business within the District of the United States Court in Wisconsin. The certificates of stock were in the possession of one of the defendant corporations in Ohio and all defendants were residents of states other than Wisconsin. Appellants contend the action was *in personam* and could not be brought under Title 28, Section 118, U. S. C. (now new Title 28, U. S. C., Sec. 1655). Appellants particularly objected to a Preliminary Injunction issued by the United States Court in Wisconsin restraining out of state defendants



from voting or otherwise dealing with the stock certificates *in Ohio*.

The Court of Appeals affirmed the preliminary injunction and said at page 659:

“Appellant’s contention that the injunction granted relief *in personam* and therefore cannot be based upon service under section 57 (Sec. 118, Title 28), which applies to actions *in rem* is not well founded. This suit is in the nature of a suit to quiet title to personal property within jurisdiction of the court. The court has in its custody the *res*. It puts out its protecting hand and says to the defendants that the plaintiff claims the *res*; that pending the determination of that claim the *status quo* shall be maintained and the defendants restrained from using the *res*; that if they desire to contest the claim of the plaintiff to this property they shall come into court and do so . . .

“. . . Consequently the court may determine the ownership, and, pending that determination, restrain all acts conflicting with the owner’s muniments and incidents of ownership. Thus it may cancel contracts alleged to be fraudulent incumbrances upon plaintiff’s title; it may enjoin the performance of contracts alleged to be illegal incumbrances upon plaintiff’s title; it may, in short, make any order that is necessary to secure plaintiff the full enjoyment of his property within the court’s jurisdiction, by injunction or otherwise, if within the prayer of the bill. . . . (Citing authorities.)

“These cases are appeals from the order granting a temporary injunction and the order refusing to vacate or dissolve the same. The merits of the controversy between the parties are not before the

court, except in so far as necessary to determine whether the plaintiff by his bill and affidavits has made out a case sufficient to sustain the temporary injunction . . .” (Emphasis added.)

Another case involving the same point is:

*Commonwealth Trust Co. v. R. F. C.*, 28 Fed. Supp. 586 (District Court, 1939).

wherein, a Government agency, Reconstruction Finance Co., claimed it could be sued only in the District of Columbia. In denying this claim, the Court said:

“ . . . the action is local in its nature, and is for the recovery of specific personal property . . .”

“The property involved in this law-suit is located in this District. It is in the possession of the defendant through its authorized agent. The plaintiff claims he is entitled to this property. We therefore hold the defendant is suable in this District in an action to recover it . . .”

A similar case was:

*Consolidated etc. Mining Co. v. Callahan, et al.*, 228 Fed. 528 (District Court, Idaho, 1915).

The Court said in discussing Section 118, Title 28, U. S. C.:

“ . . . the primary purpose of the statute was to enable federal courts to acquire jurisdiction of the persons of nonresident parties whose presence might be necessary to an adjudication of local actions touching the status of property within the district . . .”

The Court also by its *in rem* jurisdiction in interpleader over the assets physically in its Registry and otherwise under its interpleader jurisdiction, acquired nationwide jurisdiction over all appellants.

### IN INTERPLEADER.

(1) Under Section 41, Subdivision (26), Title 28, U. S. Code, statutory interpleader as it existed in 1946, when the actions were commenced and the original interpleader filed, and as amended, in new Title 28 U. S. C. Sections 1335, 1397, and 2361;

(2) Under inherent equity interpleader and bills in the nature of interpleader in federal courts generally;

(3) Under interpleader by Rule 22, F. R. C. P.

In the nearly five years during which this litigation has been expanding to include over 20,000 pages of clerk's transcript, hundreds of individual parties and several class actions, there have been between fifty and sixty separate or cumulative interpleaders, resulting in the deposit of approximately \$14,000,000.00 in assets presently in the registry of the Court below. [R. 8288-8291, Ftn. 15.]

The amounts of the individual interpleaders have varied from as high as \$6,300,000.00 in one proceeding to clear the titles to approximately 4,000 homes of 8,000 borrowers, to individual home owners struggling to clear the tangled titles to their individual homes and causing to be deposited into Court amounts as low as \$1,000.00 (the balance yet due on loans on their homes). [R. 7848-7849; 8296.]

The procedure has included cross-claims, in interpleader, and in the nature of interpleader, motions seeking interpleader (and in the nature of interpleader) relief, complaints in intervention, and all of the proceedings permitted by the liberal Federal Rules of Civil Procedure.



The basis in law of these numerous interpleaders has been one or more of the following:

(1) Statutory interpleader under old Title 28, Section 41(26), (prior to amendment in 1948), now Sections 1335, 1397 and 2361 of Title 28, U. S. Code;

(2) Interpleader under Rule 22 F. R. C. P.;

(3) Inherent equity powers of Federal Courts to receive interpleaders and bills in the nature of interpleader.

The requirements of diversity of citizenship, amounts in excess of \$500.00, conflicting claimants to the property interplead, necessary for filing an original action in the Federal Court, were met by the various proceedings. However, diversity of citizenship is not a requisite of interpleader by cross-claim, motion, or other appropriate ancillary process when the parties claimant and interpleading are all already parties to an action, properly pending before the Federal Courts, which otherwise have jurisdiction.

Among the numerous interpleaders are:

(1) TITLE SERVICE INTERPLEADER.

The first interpleader made by cross-claimant Title Service Company, made within a few days of the commencement of the action. This was a statutory interpleader under old Title 28, U. S. Code, Section 41(26), and included a bill in the nature of interpleader. It was made by a cross-claim. [R. 43.]

Appellant Ammann seized physical possession of several thousand notes, each secured by a separate deed of trust

upon a separate parcel of real property, the home of a borrower from the Association. [R. 47; 326-330.] Each note was secured by a separate deed of trust by which the borrower conveyed the legal title to his home to appellee Title Service Company as trustee, in favor of appellee Long Beach Federal as beneficiary. [R. 47; 326-330.] Appellant Ammann assigned and transferred many of these notes to appellant San Francisco Bank, notwithstanding which assignment, appellant Ammann accepted payment on account or in full from the borrowers on the notes and deeds of trust. [R. 3259]. Appellant Ammann delivered to appellee Title Service Company 174 notes and deeds of trust with a request that Title Service Company reconvey the title because said notes and deeds of trust were fully paid and discharged. The request for such reconveyances was executed only by appellant Ammann on behalf of Long Beach Association as conservator thereof. [R. 48.]

Appellant Ammann's authority to reconvey Long Beach Federal assets was unknown to Title Service Company and it made inquiry as to such authority. As a result of such inquiries, Title Service Company was immediately served as a defendant in the litigation by the Shareholders Protective Committee and was notified that the authority of Appellant Ammann to act for the Association was an issue in this litigation then pending in the Courts below. [R. 49.]

Appellee Title Service Company was further notified by the officers of said Association that if it reconveyed in reliance on Ammann's authority, it would be held individually liable for any loss resulting therefrom. [R. 49.]

Confronted with the conflicting demands of appellant Ammann demanding reconveyances on one hand and the Association and its shareholders denying Ammann's authority on the other, and being sued as a defendant in this federal court litigation, Title Service Company interplead into the registry of the federal court approximately 174 notes and deeds of trust. The notes were all payable at the offices of said Association in Long Beach, California, and the trust deeds conveyed the legal titles to 174 separate homes, situated within the district of the Court below, in Los Angeles, California, with an aggregate unpaid balance of approximately \$800,000.00. Such notes and trust deeds were physically deposited in the Registry of said United States District Court. [R. 43-56.]

Also interplead was the legal title to several thousand additional deeds of trust, likewise conveying thousands of separate parcels of real property situated in Los Angeles (and adjacent counties), California. By this interpleader, the titles to the homes of 8,000 homeowners whose notes aggregated, in unpaid balance, approximately \$12,000,000.00 were interplead into the custody and registry of the Court below. All of such thousands of parcels of real property and the homes thereon, are physically within the district of said United States District Court. [R. 43-56.]

The original conflicting claimants were, on one hand (1) appellee Title Service Company, a California corporation, a citizen of California [R. 43]; (2) the Share holder Members Protective Committee, citizens of the State of California [R. 2962]; representing the 16,000 depositors, whose savings were represented in part by said \$12,000,000.00 of loans of said notes and deeds of trust; and on the other hand, appellant-defendants, purported conserva-



tor, (3) Ammann a citizen of the District of Columbia [R. 7849] officially, and privately, of the State of Maryland [R. 7055]; (4) John H. Fahey, a citizen of the District of Columbia officially [R. 392], and privately of the State of Massachusetts. [R. 392.]

As said litigation progressed, Federal Home Loan Banks of (5) Los Angeles and (6) San Francisco, citizens of the State of California and (7) Federal Home Loan Bank of Portland, a citizen of the State of Oregon, defendants (8) William K. Divers, J. Alston Adams, and O. K. LaRoque, citizens of the District of Columbia [R. 4811] officially and, privately, citizens of their various respective domiciles, other than the State of California, to-wit: New Jersey, Ohio and North Carolina [R. 4812] (9) Federal Savings and Loan Insurance Corporation, a citizen of the District of Columbia, and various other claimants of various citizenships, all were made parties to the action.

Shortly thereafter, appellee Home Investment Company, made the first of 50 such interventions and interpleaders (a complete schedule of which is set forth as Footnote 15 to the Preliminary Injunction, the subject of these appeals [R. 8289]), by appropriate proceedings, motion, complaint in intervention, etc., and obtained orders of the Court below clearing the titles to the 174 homes involved. In such intervention and interpleader, appellee Home Investment Company caused to be deposited in the registry of the Court below approximately \$800,000.00 in cash. [R. 523.]

The 50 or more subsequent interpleader interventions followed a similar pattern. Motions for leave to intervene, complaints in intervention, order to show cause, culminated in an order issued by the Court below requiring deposit of the reconveyances, requests for recon-

veyances, notes, deeds of trust, etc., following which the intervention interpleader would cause to be deposited in the registry of the Court in cash the complete balance due and would obtain thereby a marketable title to his home.

The sum of approximately \$1,500,000.00 was interpleaded into the Registry of this Court by the approximately 50 separate interventions and interpleaders by the borrowers and homeowners thereby clearing title to approximately 400 homes together with the notes and deeds of trust deposited with the Clerk of the Court, pursuant to the approximately 50 orders of Court in connection with such interventions and interpleaders.

In various of such orders the Court found [R. 3137-3139]:

“It further appearing to the Court that neither said conservator alone, nor said Long Beach Federal Savings and Loan Association alone, nor any of the parties to this action can, without the aid and assistance of this Court, make, execute and deliver to said petitioners in intervention an effective release and discharge of the said real property described in said Complaint from the lien, encumbrance and obligation of said deed of trust securing said note in favor of said Long Beach Federal Savings and Loan Association, and it further appearing that grave and irreparable damage will be suffered by the Petitioners through being unable to clear the title to their said real property of the obligation of said notes and deeds of trust; and it further appearing that said petitioners . . . have offered to pay the amount due thereunder in full satisfaction thereof, but are in doubt as to who is entitled to receive such payments thereunder in order to secure a valid release and reconveyance and obtain a merchantable title to their said real property.

“And it further appearing that unless permitted to discharge said obligation and clear the title to said real property, Petitioners will sustain damage, and it further appearing that payment of the amount due thereunder into the Registry of this Court would be in aid of preserving the assets of said Association from further loss or damage, . . . that this litigation may continue for many additional months or even years, during which time irreparable damage will continue and increase to the detriment and harm of the Petitioners.

“And it further appearing that there are no abstractors in Los Angeles County, and abstracts of title are not a basis for establishment of merchantable title for real property, but rather by custom and usage those dealing with real property in Los Angeles County, California, demand and customarily receive policies of title insurance issued by Title Insurers, whose policies of title insurance have, therefore, become by usage and custom a virtually necessary element of a merchantable title for real property in Los Angeles County, thereby insuring that the title to said real property has been cleared and that the owner thereof has a merchantable title with the necessary policy of title insurance required by custom and usage.

“Now, therefore, the Court being fully advised in the premises grants said motion to intervene and accepts jurisdiction of said complaint in intervention and Petitioners are hereby made a party plaintiff in intervention in the above-entitled proceeding . . . .”

Appellants in 1947-1948 took appeals to this Honorable Court of Appeals from several orders containing the findings above quoted. [R. 3152.] Appellants dismissed such appeals in 1948. [R. 3976.]



The wholesale assignments and transfers by appellant Ammann of the seized Long Beach Association deeds of trust to the San Francisco Bank in exchange for seized Los Angeles Bank assets, the collecting of payments after such assignments, the shareholders litigation challenging the seizure of the Association as fraudulent, all created conflicting claims which no reputable title company was willing to insure. Only by the exercise of interpleader jurisdiction and the deposit into the registry of the Court of the full amount on deposit was it possible for the borrowers to obtain an insurable marketable title to their homes. [R. 2393, 2519, 2561, 3136.]

#### WALLIS INTERPLEADER.

Another interpleader was that of a \$50,000.00 cashier's check given by said Association to its attorney, appellee Robert H. Wallis, for legal expenses for defense of the Association from confiscation, which check was deposited by attorney Wallis with the Registry of the Court in interpleader. [R. 86-100.]

The claimants to the check were, on one hand, (1) the appellee Long Beach Association, a citizen of the State of California [R. 88], (2) the plaintiffs in this action, the appellees Mallonee, *et al.*, Shareholder Members Protective Committee, citizens of the State of California, suing as representatives of the class of the entire sixteen thousand depositors in said Association. They claimed that said check was to be used for payment of legal expenses for defending said Association from confiscation and destruction. [R. 91, 92.]

(3) Appellee Robert H. Wallis, a citizen of California, attorney for said Association, likewise had claims for his own services rendered in the defense of said Association,

and as the litigation progressed, attorneys for other parties, litigating for the benefit of, and to protect said Association and its shareholders, likewise became entitled to claims upon the said \$50,000.00 cashier's check. [R. 92.]

The other claimants were (4) appellant Ammann as purported conservator of said Association and (5) appellant John H. Fahey, the one-man Federal Home Loan Bank Administration. Ammann, individually, was a citizen of Maryland and officially citizen of the District of Columbia, Fahey officially a citizen of the District of Columbia and individually a citizen of the State of Massachusetts.

Appellants (6) Home Loan Bank Board, Divers, Adams and LaRoque, members thereof, and their various subordinates and deputies, became other claimants, at various stages, of the litigation.

Appellants claimed that the Association must be completely defenseless after they seized it, that no assets could be used for the payment of expenses for the defense of the Association against their confiscation. When in 1947 the Court below made an allowance on account of such legal expenses for the defense of the Association, the defendants made the trial judge a defendant in the United States Supreme Court. It decided this matter against them and in favor of the power of the judge to make such allowances. (*Ex parte Fahey*, 332 U. S. 258.) Appellants also claimed that the appropriation of money for legal expenses for the defense of the Association against confiscation justified the seizure of said Association to prevent such appropriations for its defense. [App. Br. p. 60; R. 8218-8224, Ftn. 4.]

During the progress of this litigation there has been thus far allowed by the Court below as attorneys' fees,

costs and special master's fees of approximately \$500,000.00 ON ACCOUNT ONLY. Part of these allowances were unsuccessfully attacked in the United States Supreme Court and in the Ninth Circuit Court of Appeals. Appellants by express written waiver of right of appeal [R. 6547-6550] or by dismissal of appeals have consented to the payment of \$260,000.00 thereof [R. 3550-3552] and in addition have approved payment by appellant San Francisco Bank of an additional \$100,000.00.<sup>5</sup> Who, among the parties and assets, is liable for payment of these and other expenses of litigation, is one of the issues yet pending for decision before said United States District Court.

#### GEORGE TURNER INTERPLEADER.

Another interpleader was by appellee George Turner.

The Association owns, in fee simple, a downtown hotel building, in part of which it maintains its offices and conducts its business. Part of this building was leased by said Association by written lease to appellee George Turner. [R. 3489-3491.]

Appellant Ammann, as purported conservator, immediately after his appointment, served written notice of cancellation and termination of said lease between the Association and said appellee Turner and demanded surrender of possession of the leased premises. [R. 3461-3491.]

The lease was for a term of twenty years and the tenant, appellee Turner, inquired of the officers and directors of said appellee Association and the appellee Shareholders

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<sup>5</sup>See budget of appellant San Francisco Bank and approval of same by appellant Home Loan Bank Board. Exhibit on Appeal No. 12591.



Protective Committee (First original Plaintiffs in the Court below), as to what action he should take upon the demand of the said conservator for cancellation of the lease. The tenant was informed by them that litigation was pending in the United States District Courts for cancellation of such conservatorship as unconstitutional, invalid and fraudulent, and that said tenant would be held individually liable for any loss occasioned the Shareholders or the Association if he paid any rentals to the purported conservator or cancelled or surrendered said lease. [R. 3461-3491.] Said tenant thereafter took no action of any sort and impounded the rentals due under said lease for approximately twenty months until (on January 16, 1948), he and other defendants were sued in the California State Superior Court by Newendorp and Bradley, two only, of the 16,000 shareholders of said Association, who claimed to be suing on behalf of said Association for approximately \$2,000,000.00 in damages, cancellation and termination of said lease, and a receivership. [R. 9585-9645.]

The Association's business office and the hotel premises involved in said lease occupy the same building owned by said Association. [R. 7851-7855.] One day after the filing of said action (on January 17, 1948), the appellant Home Loan Bank Board rescinded the order appointing appellant Ammann as purported conservator of said Association, and seven days thereafter (on January 23, 1948), the Court below made its order removing said Ammann and his subordinates and deputies from the possession and operation of the Association's business and premises, notwithstanding which the receivership proceedings were vigorously pressed in the California State courts. [R. 9585-9644.]

Appellee Turner was also made defendant in the United States District Court litigation and thereafter deposited into the registry of the Court below, in interpleader, approximately \$18,000.00 in rentals accrued under the said lease and asked and obtained Federal Court preliminary injunction against proceedings in the California State Courts. He also asked (1) adjudication by the Court below of the validity of his lease of the premises owned by the Association, and the validity and effect of the attempts of appellants Ammann, *et al.*, to cancel said lease by their own notice, and (2) injunctions against any further proceedings in the State Court (or any other forum), for cancellation of the lease, or for damages against himself or other matters. [R. 3461-3491.]

Defendants in appellee Turner's cross-claims in these proceedings are the appellee Association, the appellees Shareholders Protective Committee, the Newendorp and Bradley, two individual shareholders who sued in State Court, appellants purported conservator, Home Loan Bank Board and its predecessors in interest, and all other parties to the litigation. [R. 3461-3491.]

The issues thus raised by such interpleader as to the possession and title of real estate owned by the Association and the validity of the lease and the rentals due thereon, are yet pending before the Court below undecided. They have been continued solely because of the negotiations for compromise of such litigation instituted by the appellant Home Loan Bank Board, which negotiations had continued for over a year and a half. [R. 8239, Ftn. 10; 8239, 8257, 8258, 8260, 8262.]

Said Court also required the deposit into the registry of said Court, of \$5,300,000.00 in United States Government Bonds and approximately \$8,500,000.00 (in unpaid balances due), of notes and deeds of trust, transferred to said appellant San Francisco Bank by the appellant Ammann as purported conservator of said Association. (The order of the Court below requiring such deposit is Exhibit "F" [R. 8399] of the Preliminary Injunction in this appeal.)

The parties to said interpleader thus were (1) the appellee Long Beach Association and (2) appellee Shareholders Protective Committee, denying liability upon \$6,300,000.00 of notes purportedly executed on its behalf by the appellant Ammann, its purported conservator; (3) appellee Los Angeles Bank, claiming that five-sixths ( $5/6$ ) of said assets were the money and property of its stockholders (seized and confiscated from them by the defendants), and had been wrongfully used by said appellants in loans made to said appellant Ammann; and (4) the appellants Federal Home Loan Banks of (5) Portland and (6) of San Francisco (whichever exists), and (7) Home Loan Bank Board and Ammann, *et al.*; claiming that the \$6,300,000.00 in notes were the obligation of said Long Beach Association to said bank and that the stockholders of said Los Angeles Bank and said Bank itself, had no right, claims or ownership, in the said money and assets loaned on said notes and deeds of trust.

The citizenship of the parties to this interpleader was, (1) appellee Long Beach Federal Savings and Loan Association, a citizen of the State of California; (2) appellee Shareholders Protective Committee, citizens of California; (3) appellee Federal Home Loan Bank of Los Angeles and its stockholders, said bank being a citizen of the State of California and the said stockholders citi-



zens of the States of California, Nevada and Arizona; (4) the appellant Federal Home Loan Bank of Portland, a citizen of Oregon; (5) appellant the Federal Home Loan Bank of San Francisco, a citizen of California; (6) the appellants, purported conservator Ammann, officially a citizen of the District of Columbia and privately a citizen of the State of Maryland, together with the appellants (7) Home Loan Bank Board, officially citizens of the District of Columbia and individually citizens of Ohio and New Jersey.

FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION  
INTERPLEADER.

Said appellee Association, for many years prior to its seizure, insured the accounts of its depositor shareholders with the appellant Federal Savings and Loan Insurance Corporation. [R. 6921.]

The only governing authority of said appellant Federal Savings and Loan Insurance Corporation is the appellants Home Loan Bank Board who are sole trustees of said Federal Savings and Loan Insurance Corporation (48 Stat. 1246, 12 U. S. C. 1724.) By various reorganization plans, appellant John H. Fahey, Federal Home Loan Bank Commissioner, became the sole trustee and only governing authority of said appellant Federal Savings and Loan Insurance Corporation. By subsequent reorganizations during the pendency of this litigation, the appellants Divers and Adams (and later the appellant LaRoque), became the sole trustees of said appellant Federal Savings and Loan Insurance Corporation and the only governing authority thereof. (Reorganization Plan No. 3 of 1947, 12 F. R. 4981.)

Premiums for the payment of such insurance are charged said appellee Association semi-annually and are

computed upon a sliding scale of percentages of the total outstanding liabilities of said Association, including the depositor-shareholder accounts, creditor obligations and other similar matters. [R. 6475.]

Bills for said insurance premiums rendered subsequent to the seizure of said Association and during the time it was in the possession and control of appellant Ammann as purported conservator thereof, computed such premiums by taking into account the purported borrowings of \$7,300,000.00 (later unpaid balance of \$6,300,000.00), made by said Ammann purportedly on behalf of said Association from said appellant San Francisco Bank. [R. 6475.]

The premiums thus computed were paid by the said appellant Ammann from the funds and assets of said appellee Association to his superior and principal, appellant John H. Fahey in Fahey's said capacity as sole trustee of said appellant Federal Savings and Loan Insurance Corporation. [R. 6475.]

After the removal of the said purported conservator by the order and judgment of the Court below in January of 1948, bills were rendered to said Association for payment of premiums for insurance of its accounts and liabilities by said Federal Savings and Loan Insurance Corporation, which bills included as an item chargeable thereon, premium upon the liability of \$6,300,000.00 denied by said Association to exist, but claimed by said appellant Home Loan Bank Board to have been incurred by said purported conservator Ammann for and on behalf of said Association. [R. 6475.]

The appellee Association was notified by its Shareholders Protective Committee (appellees), not to pay such bills thus erroneously computed and rendered; because to have

done so would, or might, have estopped said Association and said Shareholders Committee from ever contesting the validity of said obligation of \$6,300,000.00, the amount, validity and status of which were then pending issues in this litigation between said Shareholders, said Association and the said appellants Ammann, Fahey, the Home Loan Bank Board, San Francisco Bank and other interested parties. [R. 6476-6477.]

During the pendency of settlement negotiations, discussions were had between representatives of said appellee Association and members of said appellants Home Loan Bank Board, said Federal Savings and Loan Insurance Corporation and their subordinates and agents; and it was agreed that said Association would not make an immediate issue of the question of payment of such disputed premium and the said appellant Federal Savings and Loan Insurance Corporation and the said appellant Home Loan Bank Board would not urgently press the payment thereof in the hope that when said litigation was settled, this would not be further a subject of controversy between the parties.

Matters thus progressed during the pendency of settlement negotiations until in April of 1949, when pre-emptory demands were made by defendants upon said Association for the immediate payment of the total claimed amount of such premiums, including said erroneous computation based upon said purported \$6,300,000.00 loan, liability for which was denied by said Association. [R. 6475.]

Various threats were made as to “consequences” in case said Association did not pay the amount of such demanded premium regardless of its contention as to the validity thereof. Said Association was warned by appellees Mallonee, *et al.*, its Shareholders Protective Com-



mittee, representing the 16,000 depositor-shareholders, who are the actual owners of this mutual Association, that if the Association made any such payment contrary to the warnings of said Shareholders Protective Committee, and loss or harm thereby resulted to the interest of its shareholders, or the litigation was prejudiced, its officers and directors would be held individually liable and responsible therefor. [R. 6628-6638.]

Said Association thus faced with the conflicting demands on one hand by its shareholder depositors committee, citizens of the State of California and representing all of the 16,000 shareholder depositor members; and on the other hand the conflicting claims of said appellants Federal Savings and Loan Insurance Corporation, citizen of the District of Columbia, Ammann, a citizen of Maryland and of the District of Columbia, Home Loan Bank Board and its members, Divers, Adams and La-Roque, citizens of the States of Ohio, New Jersey and South Carolina respectively, made its motion on notice, before the Court below, and tendered deposit into the Registry of said Court of the total amount of said disputed premiums then due (April 16, 1949) amounting to approximately \$24,000.00.

Counsel for said appellants Home Loan Bank Board, Federal Savings and Loan Insurance Corporation, *et al.*, opposed said motion before said Court below, notwithstanding which, such opposition was overruled, the motions granted and the deposits into the Registry of the Court below accepted. [R. 7098.] Subsequent installments of premiums became due during the pendency of the litigation and were similarly deposited into the registry of the Court on proceedings opposed by appellants. There is now on deposit in the registry of the Court below approximately \$59,000.00 so deposited. Counsel for the appellees

Shareholders Protective Committee have likewise joined said Association in the motions for deposit into the registry of the Court of the amounts of said disputed premiums.

As a result of some or all of the 50 to 60 separate interpleaders thus made during the approximately five years this litigation has been pending, the Court below acquired interpleader jurisdiction over all appellants and appellees. This jurisdiction was nationwide. The process of the Court below, including injunctions, summons, and other process, was by Title 28, U. S. C., Section 41(26), 231, Section 24(26), (as it now exists, Title 28 U. S. C., Sections 1335, 1397 and 2361), and by Rule 22, Federal Rules of Civil Procedure to be "served by the U. S. Marshals for the respective districts where the claimants reside or may be found."

On this basis alone, without the many other grounds, the preliminary injunction appealed from was within the statutory power and authority of the Court below. Appellants by their administrative hearing, were threatening to require the parties to litigate before appellants, the issues tendered and made in interpleader before the Court below.

A case affirming the nationwide scope of process and injunction in interpleader arose from an appeal of a decision of this Honorable Court of Appeals for the Ninth Circuit, decided by the United States Supreme Court in 1940. The case was:

*Treinies v. Sunshine Mining Co.*, 308 U. S. 66, 84 L. Ed. 85 (1940), (U. S. Supreme Court, 1940), (Affirming Court of Appeals for 9th Circuit).

Litigation had proceeded in two State Courts, one in the State of Washington and the other in the State of Idaho. The State Courts arrived at conflicting conclu-

sions as to ownership of several thousand shares of stock in the plaintiff Sunshine Mining Company.

The mining company, faced with conflicting judgments and litigation affecting the same stock, filed a new action in interpleader in the U. S. District Court in Idaho and obtained an injunction against further litigation in both State Courts. The U. S. Supreme Court, of its own motion raised the question of jurisdiction of the U. S. Court in interpleader and decided in favor of such jurisdiction.

The Supreme Court said:

“By the Act of January 20, 1936 (Old Title 28, U. S. C. Sec. 41, Sub. 26), the district courts have jurisdiction of suits in equity, interpleading two or more adverse claimants, instituted by complainants who have property of the requisite value claimed by citizens of different states. The suit may be maintained ‘although the titles or claims of the conflicting claimants do not have a common origin, or are not identical, but are adverse to and independent of one another’ . . .” (Citation to Title 28 U. S. C. added.)

Appellants questioned the power of a Federal Court in Idaho to enjoin proceedings by a receiver in the State of Washington, before the Washington State Courts. In upholding such power in the Idaho Federal Court, the Supreme Court said:

“. . . Process may run at least throughout all the states.”

“Neither are the provisions of Sec. 265 of the Judicial Code, 28 U. S. C. A. 379 applicable. That section forbids a United States court from staying proceedings in any state court. The Interpleader



Act, passed subsequently, however, authorizes the enjoining of parties to the interpleader from further prosecuting any suit in any state or United States court on account of the property involved. Such authority is essential to the protection of the interpleader jurisdiction and is a valid exercise of the judicial power." (Emphasis added.)

The parties to the appeal attempted to re-litigate the jurisdiction of the State Courts which had made final judgments determining such question of jurisdiction. In refusing to permit re-litigation of jurisdiction when the judgments of the State Court had become final, the Supreme Court said:

"One trial of an issue is enough. 'The principles of *res judicata* apply to questions of jurisdiction as well as to other issues,' as well to jurisdiction of the subject matter as of the parties." (Citing authorities.) (Emphasis added.)

The very broad powers of a court of equity to protect its interpleader jurisdiction, particularly to preserve the integrity of its final judgments from violation by a defeated litigant are shown in the case of:

*Dugas v. American Surety Company*, 81 L. Ed. 720, 300 U. S. 414 (U. S. Sup. Ct., 1937).

Interpleader action wherein surety company deposited total amount of bond in the U. S. Court, which entered judgment thereon determining liability of the surety company to defendant. The judgment enjoined any other State or Federal Court actions against the interpleading company. Defendant brought another action in the State Court against another and different surety company

on a different bond which nevertheless related to the same transaction, and upon which the interpleading surety company would eventually be liable for payment. The interpleading surety company filed a supplemental bill in its original interpleader action, setting forth the indirect method attempted by defendant, to evade the prior interpleader decree, and referring to the earlier judgment and injunction in interpleader of the Court.

The Court under its interpleader jurisdiction, promptly enjoined any further prosecution of the new State Court action. Defendant took this appeal to the Supreme Court challenging the jurisdiction of the District Court and particularly its power to enjoin proceedings against non-parties to the original interpleader action.

The Court found that the new State Court action against a different defendant was “in controvention of the spirit if not the letter of the decree in the interpleader suit.”

The United States Supreme Court affirmed the injunction and said (quoting the interpleader statute):

“‘Sec. 2 . . . Notwithstanding any provision of the Judicial Code to the contrary, said court shall have power to issue its process for all such claimants and to issue an order of injunction against each of them, enjoining them from instituting or prosecuting any suit or proceeding in any State court or in any other Federal court . . . until the further order of the court; which process and order of injunction shall be returnable at such time as the said court or a judge thereof shall determine and shall be addressed to and be served by the United States marshals for the respective districts wherein said claimants reside or may be found.’”

“Sec. 3. Said court shall hear and determine the cause and shall discharge the complainant from further liability; and shall make the injunction permanent and enter all such other orders and decrees as may be suitable and proper, and issue all such customary writs as may be necessary or convenient to carry out and enforce the same.’”

“Plainly the court had jurisdiction of both the subject matter and the parties. No appeal was taken from either decree. Therefore Dugas was bound by both decrees . . . But these rulings were all made in the exercise of the court’s jurisdiction, were subject to challenge and re-examination only on appeal, and became conclusive on him in the absence of an appeal.”

“The jurisdiction to entertain the supplemental bill is free from doubt. Such a bill may be brought in a Federal court in aid of and to effectuate its prior decree to the end either that the decree may be carried fully into execution or that it may be given fuller effect, but subject to the qualification that the relief be not of a different kind or on a different principle. Such a bill is ancillary and dependent, and therefore the jurisdiction follows that of the original suit, regardless of the citizenship of the parties to the bill or the amount in controversy.

“6. The power of the court to enjoin Dugas from further prosecuting his suit in the state court on the appeal bond has full support in §§2 and 3 of the Interpleader Act of 1926 before quoted, as also in settled adjudications respecting the power of a federal court to protect its jurisdiction and decrees.” (Emphasis added.)



Interpleader by cross-claim in an otherwise doubtful class action, was upheld as an absolute right which could not be denied, even in the discretion of a District Court in the case of:

*Railway Express v. Jones*, 106 F. 2d 341 (C. C. A. 7, 1939).

Plaintiff filed a class action for himself and others against Railway Express and others to recover \$24,000.00 of which plaintiff and his class had been defrauded by other defendants. Each of the victims of the fraud had lost less than \$500.00, but the aggregate of all the losses was \$24,000.00. The Collector of Internal Revenue appeared in the action and claimed a lien on the \$24,000.00 for income tax due from one of the perpetrators of the fraud. Defendant Railway Express moved in the District Court to be allowed to interplead by a counter-claim. The District Court denied the motion, the Court of Appeals, Seventh Circuit, reversed, saying (at p. 344):

“Where the possessor of funds can establish the essential and jurisdictional facts prescribed in the statute, his right to relief under this section (41(26)) is absolute. . . .”

and at page 345:

“By proceeding under the counterclaim of the Railway Express the jurisdiction of the court will be unassailable, and the claims of all claimants may be litigated exactly the same as in a proper class suit.

“It therefore follows that as a matter of wise discretion, *as well as of recognizing a right which*

the railway express possessed absolutely, the court should, after the counterclaim was filed, have proceeded as provided for by the interpleader statute." (Emphasis added.)

Regardless of any other jurisdiction, Title Service Company's interpleader (a matter of "absolute right") establishes the jurisdiction of the Court below to proceed with the entire class action. Subsequent decisions on constitutionality could not affect the jurisdiction of the Court below as is demonstrated by the case of:

*Mallors v. Equitable Life*, 87 F. 2d 233 (C. C. A. 7, 1936).

Appeal from interlocutory decree discharging interpleader insurance company. Interpleader was a New York corporation. All claimants citizens of Illinois. Appellants claim lack of diversity prevents interpleader jurisdiction. In affirming jurisdiction in interpleader, the Court of Appeals, Seventh Circuit, said:

" . . . This criticism is on the assumption that the insurance company is not a real party to the litigation. But such assumption is unfounded. It is true, the insurance company concedes a liability for the full amount due upon its contracts. It does not, however, concede liability to each of the defendants for the full amount. . . . Inasmuch as it seeks to avoid a double liability, the insurance company is a real party in interest.

"Like many another law suit, when the pleadings are settled and the trial is over, some of the controverted issues cease to controverted . . .

"As a real adverse party to the beneficiaries named in the policies and to those who assert that they are

beneficiaries the insurance company is permitted to bring this suit in the Federal court upon a showing that its domicile is New York, and the domicile of all the claimants is Illinois.

“(4) Subsequent disposition of some of the issues by the court before judgment cannot oust the Federal court of jurisdiction any more than a change of residence of one or more of the parties after suit is begun in the Federal court may accomplish such a result.”

“. . . The institution of this interpleader suit by the insurance company has made the Federal District Court the forum wherein the controversies must be determined. The District Court must determine the issues which go to the merits of the claims of the contending parties.”

Removal of appellant Ammann as conservator could have no effect on the jurisdiction of the Court below in interpleader or otherwise, because as above stated:

“. . . disposition of some of the issues by the court before judgment cannot oust the Federal court of jurisdiction. . . .”

This Honorable Court of Appeals for the Ninth Circuit, less than four years ago upheld interpleader jurisdiction entirely independent of the interpleader statutes, and held diversity of citizenship among the various claimants unnecessary to the jurisdiction of the District Court, in the case of:

*Rossetti v. Hill*, 162 F. 2d 892 (C. C. A. 9, 1947).

“The question of jurisdiction is raised by the appellees on petition for rehearing on the ground that



Section 2, Article III, of the United States Constitution and the Judicial Code, Section 24, 28 U. S. C. A. §41, do not give jurisdiction to the federal district court in an interpleader action where all claimants to the fund are residents of the same state.”

“It seems clear that the reason for the interpleader is not negated by the fact that the claimants to the fund all reside in the same state. The usefulness of the proceeding is in the protection of the party against conflicting claims. Jurisdiction is laid by the allegations of the complaint. The complaint in this case is that the complainant is a party to a controversy which cannot be settled by any single action against it and cannot be settled by any action of its own without double payment. The controversy is settled by the sensible process of bringing all parties into one court proceeding.

“. . . The Security Trust case, *supra*, and the Mallers case, *supra*, both containing the same fact situation as the instant case hold that the jurisdictional requirements are met under 28 U. S. C. A. §41(1). The Interpleader Act, 28 U. S. C. A. §41(26) did not abrogate the right to bring interpleader suits in the federal courts under 28 U. S. C. A. §41(1); that is, the interpleader statute was intended to afford a remedy in situations where interpleader had previously been unavailable. The conclusion drawn was that the statute being remedial, it supplements rather than supplants the earlier statute. Thus, an interpleader suit may be brought in a federal court where the interpleader’s domicile differs from the claimants who are domiciled in another state. 28 U. S. C. A. §41(1).

“The petition for rehearing is denied.”

In 1937, this Honorable Court of Appeals had likewise held that diversity between the claimants was not required, in the case of:

*Security Bank v. Walsh*, 91 F. 2d 481 (C. C. A. 9, 1937).

Plaintiffs in interpleader, a British corporation, sues conflicting claimants, all citizens of California.

Objection is made to the jurisdiction. This Honorable Court of Appeals for the Ninth Circuit held jurisdiction existed notwithstanding lack of diversity and said on page 483:

“Jurisdiction in this case is not conferred by the Interpleader Act of January 20, 1936 (28 U. S. C. A. §41(26)). That act gives jurisdiction of suits in equity begun by bills of interpleader only where two or more adverse claimants, citizens of different states, are claiming the fund or property deposited in the registry of the court. Here the adverse claimants are all citizens of California. However, the complainant in interpleader is a British corporation, and the amount in controversy exceeds \$3,000. The jurisdictional requirements are thus met under the Act of September 24, 1789 (as amended), R. S. §563 (as amended), 28 U. S. C. A. §41(1), unless the Interpleader Act of 1936 was intended to be exclusive and to circumscribe the provisions of the more general statute.

“It seems clear that it was not the intent of the interpleader act, in its original or amended form, to abrogate the right to bring suits in interpleader in the federal courts under the general provisions of 28 U. S. C. A. §41(1). That right had long been exercised . . . (citing authorities). Rather, the

statute was intended to afford a remedy in situations where interpleader had theretofore been unavailable because of the impossibility of haling before a court claimants residing beyond its territorial jurisdiction. . . . (Citing authorities.)

“Accordingly, we hold that the lower court had jurisdiction to entertain the interpleader suit under the general power conferred by 28 U. S. C. A. §41(1).”

That the jurisdiction of a Federal Court in interpleader is exclusive and prevents any other tribunal from adjudicating as to the interplead assets is illustrated by the case of:

*Cramer v. Phoenix, etc.*, 91 F. 2d 141 (C. C. A. 8, 1937).

In affirming interpleader jurisdiction, the Circuit court said:

“It is elementary that where one court takes jurisdiction of a specific thing, the *res* is as much withdrawn from the judicial power of another as if it had been removed to a different territorial sovereignty. The tribunal whose jurisdiction first attaches holds it to the exclusion of the other until its duty is fully performed and the jurisdiction involved is exhausted. . . .

“. . . It appears that the proceeds of the two policies were deposited in the registry of the lower court. In these circumstances that court had exclusive jurisdiction and power to hear and determine all questions respecting title, possession, and control of them. . . .”

The right of an interpleading plaintiff to join declaratory relief with interpleader, and require all parties to



litigate all claims before the one court, notwithstanding other prior pending litigation in other courts, is illustrated by the case of:

*Maryland Casualty Co. v. Glassell-Taylor*, 156 F. 2d 519 (C. C. A. 5, 1946).

Action by bill in the nature of interpleader and complaint for declaratory relief. Plaintiff had issued surety bond for \$595,000.00 guaranteeing completion of a housing project.

Plaintiff denied all liability to all defendants and by its complaint alleged that there were pending four prior separate court actions in other courts against it, for amounts varying from \$1,000,000.00 to several thousand dollars, and further alleged five other claims which had not yet resulted in court action. Objection was made by defendants to the jurisdiction of the Federal Court and the District Court dismissed because of adequacy of remedies in the prior pending Federal and State Court actions.

The Court of Appeals, Fifth Circuit, reversed and said at page 523:

“(5-7) We think the lower Court was in error in dismissing the complaint. It stated a cause of action under: (a) the Interpleader Statute; (b) the Rules of Civil Procedure; and (c) the Declaratory Judgment Statute. The Court had jurisdiction of the parties and of the subject matter in all three of these aspects. . . .

“. . . The Federal Interpleader Statute and Rule 22, Federal Rules of Civil Procedure, were not designed merely to prevent a multiplicity of suits and to protect the stakeholder from multiple liability, but they were also intended to require all interested

parties to come in and set up their claims in one case . . . The Interpleader Statute was also designed to afford a means of process by which claimants to a fund, who live in other states, may be called in and required to litigate in one court to the end that all claimants to the fund, as well as the holder of the fund, may be given protection.

“(10) We consider it important that the usefulness of the statutory remedy of interpleader, which has been greatly enlarged by the Interpleader Act of 1936 and by Rule 22 of the Federal Rules of Civil Procedure, should not be impaired by narrow and restrictive rulings. In such cases where jurisdiction clearly appears, Federal District Courts do not have the right to decline to exercise that jurisdiction . . .”

The distinction between necessary allegations in a bill in the nature of interpleader and one in strict interpleader as well as that diversity of citizenship is not required is shown by the case of:

*Hunter v. Federal Life Ins. Co.*, 111 F. 2d 551  
(C. C. A. 8, 1940).

Page 555:

“The appellant’s first contention is that the court below was without jurisdiction, because diversity of citizenship did not exist, the claimants all being citizens of Arkansas, and the plaintiff being a nominal party . . .

“. . . we think that the right of a stakeholder to be relieved of vexation, the danger of multiple liability, and the responsibility of undertaking to decide, at his peril, which of two or more adverse claimants is entitled to money or property in his

hands, has the effect of making him a real party in interest. In this case the plaintiff's right to maintain this suit was controverted, and the appellant sought to subject the plaintiff to penalties and attorney's fees under the statutes of Arkansas. There was nothing unreal about the plaintiff's controversy with the appellant with respect to its right to resort to interpleader. We think that the requisite diversity of citizenship was present.

“(2) The appellant also contends that the plaintiff's bill does not contain all of the essential elements of a strict bill of interpleader in that it does not aver that there are two or more claimants in existence capable of interpleading and claiming a right to the proceeds of the policy, and in that the bill does not contain an averment that the plaintiff claims no interest in the proceeds of the policy or stands perfectly indifferent between the adverse claimants.

“It would serve no useful purpose to discuss the sufficiency of the averments of the bill as a strict bill of interpleader, since it was clearly sufficient as a bill in the nature of interpleader, which may be maintained by one who is not a mere stakeholder. (Citing authorities.) . . .

“The jurisdiction of a federal court to entertain a bill of interpleader is not dependent upon the merits of the claims of the defendants. Metropolitan Life Ins. Co. v. Segartis, D. C., 20 F. Supp. 739. It is our opinion that a stakeholder, acting in good faith, may maintain a suit in interpleader for the purpose of ridding himself of the vexation and expense of resisting adverse claims, even though he believes that only one of them is meritorious . . .” (Emphasis added.)



The question of jurisdiction was so important that all of the justices of the Fifth Circuit considered, in bank, the case of:

*U. S. v. Sentinel Insurance*, 178 F. 2d 217 (C. C. A. 5, 1949).

In bank with all justices because of jurisdictional question.

Seven fire insurance companies commenced interpleader against Collector of Internal Revenue, federal receivers and various other claimants. Appellants maintained that because some of the claimants were of the same citizenship as others, interpleader jurisdiction was thereby defeated.

C. C. A. 5, said:

“(6) We hold, however, that even if the plaintiffs in the interpleader suit had been dismissed before final decree and had gone out of the case, the requirement of the statute would be met if there were two or more claimants who were citizens of different states regardless of how many claimants there might be who were citizens of the same state with other claimants. We think this question has been settled by two decisions of this Court. In *Dugas v. American Surety Co.*, 5 Cir., 82 F. 2d 953, we said: ‘Some of the claimants now are, and at all times mentioned in the bill were, citizens of named states other than Louisiana, and some of these claimants now are, and at all times mentioned in the bill were, citizens of the state of Louisiana.’ And, so saying, held that there was jurisdiction of the interpleader suit. On appeal, 300 U. S. 414, text 425, 57 S. Ct. 515, 519, 81 L. Ed. 720, the Supreme Court said: ‘Plainly the court had jurisdiction of both the subject-matter and the parties.’

“(7) If in the face of these decisions we were in any doubt that Congress, in the enactment of the Federal Interpleader Statute—which was designed to bring into one court all of the claimants to a particular fund so that it could be equitably divided among all rather than being a race to the swift—, intended so to restrict the statute that there could be only one claimant to the fund per state, that doubt would be put at rest by subsection (b) of the Federal Interpleader Act of 1936, under which this case was filed and tried, which, in defining the venue of interpleader suits, provides: ‘(b) Such a suit may be brought in the district court of the district in which one or more of such claimants resides or reside.’

(Emphasis added) for it is obvious that if there could be only one adverse claimant per state there certainly could not be more than one of such claimants in any court district, since federal court districts do not extend across state boundaries.

“The relief sought by the plaintiffs was the prevention of double liability and a multiplicity of suits as designed by the Act . . .

“(8) Thus it appears that the suit falls squarely within the Federal Interpleader Statute and the Court below was not without the jurisdiction conferred thereby.”

Dismissal of cross-claims in interpleader action prior to hearing on the merits was reversed in:

*Publicity, etc. v. Collector Internal Revenue*, 139 F. 2d 583, C. C. A. 8 (1943).

Appeal from order dismissing cross-claim in interpleader action.

An insurance company confronted with the conflict claims of the beneficiaries of its policies on the one hand

and the collector of internal revenue asserting income tax liens and rights on the other hand, interplead the surrender value of the policies into the District Court.

Various creditors of the beneficiaries under the policies filed their cross-claims.

One of the beneficiaries, after a "conference" with the U. S. Attorney representing the Collector of Internal Revenue, withdrew his claims to the funds in court. Whereupon the trial court dismissed all cross-claims and awarded the funds to the Collector, to the exclusion of the creditors. The creditors appealed and the Court reversed, saying:

"(1) This Court has repeatedly said that a motion to dismiss a complaint should not be granted unless it appears to a certainty that the plaintiff would be entitled to no relief under any state of facts which could be proved in support of his claim . . . (Citing authorities.)

"Rule 22(2) of the Federal Rules of Civil Procedure, 28 U. S. C. A., following section 723c, provides that actions brought under §24(26) of the Judicial Code as amended, Title 28 U. S. C. A., §41(26), shall be conducted in accordance with those Rules. The Federal Rules of Civil Procedure do not sanction the disposition of doubtful issues of fact or law upon motions to dismiss for insufficiency of pleadings. The Rules contemplate a determination of all such issues by the trial court after a hearing, and that the trial court shall make findings of fact and conclusions of law, to the end that the parties to the litigation and the reviewing court may know the exact factual and legal basis for the trial courts' decision . . ."



“(4) While we shall not, upon this appeal, express any opinion as to the merits of this case, we consider it important that the usefulness of the statutory remedy of interpleader, which has been greatly liberalized by the Interpleader Act of 1936 and by Rule 22 of the Federal Rules of Civil Procedure, shall not be impaired by narrow and restrictive rulings which might prevent bona fide claimants, with meritorious claims to a fund deposited by a stakeholder, from securing an adjudication of their rights. . . .” (Emphasis added.)

Interpleader of leases and other incidents of real property was upheld in the case of:

*Pure Oil Co. v. Ross*, 170 F. 2d 651, C. C. A. 7 (1948).

Appeal from order refusing to permit intervention in interpleader action. Reversed.

C. C. A. 7 said at page 652:

“ . . . The controversy involves the title to real estate in Richland County, Illinois, and the fund represents the purchase price of a portion of the oil and gas from two oil and gas leases . . . .”

“At the outset we are met with the contention that the intervening petition should have been dismissed because both Schiff and Scott are residents of New York.

“(2) It will be enough to say that a complaint interpleading one group of claimants, all of whom are citizens of Illinois, and another group claiming adversely, all of whom are citizens of various States,

satisfies the requirements of the Interpleader Act, since the Act requires diversity only as between the claimants . . . (Citing authorities.)” (Emphasis added.)

#### CONCLUSION RE INTERPLEADER.

The jurisdiction of the court below to adjudicate all issues attached upon the filing of the first valid cross-claim in interpleader, in addition to its jurisdiction under the original complaint. The fifty to sixty successive interpleaders, have interlaced jurisdiction among all of the parties to the litigation regardless of their residence or domicile.

When that jurisdiction was flouted by the appellees Home Loan Bank Board attempting to appoint themselves receivers for the successful litigants, thereby to determine title and possession of the assets in the exclusive jurisdiction of the Federal Court in its registry, the Court had no choice; it could abdicate its constitutional authority and permit the defeated litigants to vacate the final judgment of the court below and thereby acquiesce in appellants usurping the authority of this Court of Appeals, or it could preserve the respect due the entire judicial structure, including the District Court, this Court of Appeals, and the U. S. Supreme Court, and enjoin the defeated litigants from vacating a final U. S. Court judgment.

That the injunction was only preliminary, speaks for the moderation of the court below. Many courts, much less provoked than the court below, have punished as summary contempt, an attempt by one of the litigants to violate a final judgment of the Court.

## FORMER JUDGMENTS AND ORDERS.

By former judgments and orders, the Court has expressly and impliedly held that it has jurisdiction over appellants, and all other parties, and over the subject matter of the actions.

(1) Appellants have dismissed previous appeals from judgments containing the express findings that the Court has jurisdiction over the parties and the subject matter.

(2) Appellants have failed to appeal from judgments containing the express finding that the Court has jurisdiction over parties and the subject matter.

(3) In many orders and judgments, the Court has impliedly exercised jurisdiction over appellants and the subject matter.

(4) All of the foregoing judgments and orders (1) to (3) have become final, are *res adjudicata*, and the law of this case.

Jurisdiction of the subject matter and jurisdiction of the parties have been the subject of appeals, writs, motions to dismiss, motions to quash and every possible attack by appellants. Notwithstanding these attacks, jurisdiction of the court below has been sustained and upheld in six appeals and writs taken by appellants and decided against them. Jurisdiction of the court below has never been denied by any appellate court in this litigation.

Appellants' predecessors in the first appeal to the U. S. Supreme Court urged dismissal of the entire action including cross-claims, third party complaints, etc.



The U. S. Supreme Court in the 1947 appeal (332 U. S. 245, 91 L. Ed. 2030, said:

“ . . . Nor do we mean to be understood that if supervising authorities maliciously, wantonly and without cause destroy the credit of a financial institution, there are not remedies . . .

“It is obvious that there is more to this litigation than meets the eye on the pleadings. The plaintiffs' charges that ill will and malice actuated the supervising authorities, as well as the charges of the defendants that the institution has been mismanaged and that the management is unfit, are like undetermined by the courts below, and we make no determination or intimation concerning the merits of these issues or as to other remedies or relief than that in the judgment before us.”

The Mandate from the Supreme Court [R. 2304] reads:

“And It Is Further Ordered that this cause be, and the same is hereby, remanded to said District Court for proceedings in conformity with the opinion of this Court.”

Appellants' efforts to secure dismissal in the Supreme Court failed. Their application for a writ of prohibition met a similar fate. In *Ex parte Fahey*, 332 U. S. 258, 259, 91 L. Ed. 2041 (1947), the Supreme Court said:

“Mandamus, prohibition and injunction against judges are drastic and extraordinary remedies. We do not doubt power in a proper case to issue such writs. But they have the unfortunate consequence of making the judge a litigant, obliged to obtain personal counsel or to leave his defense to one of the litigants before him . . . .”

Private litigants have sought the same objectives here undertaken by appellants. That is, to lose the issue of jurisdiction by final judgments of the courts below and thereafter to seek avoidance of such judgments against them. The U. S. Supreme Court has uniformly, in many decisions, held that once the court below has determined its jurisdiction by a final judgment, the losing parties cannot thereafter attack such jurisdiction even though the judgment of the court below was erroneous and notwithstanding the attack on jurisdiction involved jurisdiction of the subject matter. A case illustrating this point is:

*Stoll v. Gottlieb*, 305 U. S. 165, 83 L. Ed. 104 (1938).

Plaintiffs sued defendants upon a guaranty of a bond issue. The corporation which had issued the bonds went through bankruptcy and a 77(b) reorganization by the U. S. District Court. In that proceeding notice was given to plaintiffs of a plan for cancellation of the guaranty. Plaintiffs did not appear at the hearing and the plan of reorganization which provided for extinction of plaintiffs' guaranties against the defendants, was, over the objection of others of the same class as plaintiffs, confirmed by the U. S. District Court. The judgment of the District Court was executed by the transfer of the assets and the cancellation of the guaranties. The plaintiffs filed a petition in the U. S. District Court proceeding praying vacation or modification of the order cancelling his guaranty on the ground that the District Court in proceedings for reorganization did not have power or jurisdiction to cancel the guaranty. An order was entered denying this petition. No appeal was ever taken therefrom.

Notwithstanding this action by the U. S. Court, plaintiffs sued in the state courts upon the cancelled guaranty. Defendants plead the judgment of the U. S. District Court, in the reorganization, cancelling the guaranty. Plaintiffs claimed that the U. S. Court was without jurisdiction to cancel the guaranty and therefore plaintiffs could yet recover in the state courts. Supreme Court of Illinois affirmed a judgment enforcing the cancelled guaranty and the U. S. Supreme Court reversed, holding the question of jurisdiction of the U. S. Court had been decided by that court, that no appeal had been taken from such decision, and right or wrong, the judgment was final. The Supreme Court said at page 170:

“ . . . But where the judgment or decree of the Federal court determines a right under a Federal statute, that decision is ‘final until reversed in an appellate court or modified or set aside in the court of its rendition.’ As this plea was based upon an adjudication under the reorganization provisions of the Bankruptcy Act, effect as *res judicata* is to be given the Federal order, if it is concluded it was an effective judgment in the court of its rendition . . . In this particular case, a federal question was involved. This was the power of the Federal courts to protect those who come before them relying upon constitutional rights or rights given, as in this case, through a statute enacted pursuant to constitutional grants of power. . . .

. . . There must be admitted, however, a power to interpret the language of the jurisdictional instrument and its application to an issue before the court. Where adversary parties appear, a court must have



the power to determine whether or not it has jurisdiction of the person of a litigant, or whether its geographical jurisdiction covers the place of the occurrence under consideration. Every court in rendering a judgment tacitly, if not expressly, determines its jurisdiction over the parties and the subject matter. . . . After a Federal court has decided the question of the jurisdiction over the parties as a contested issue, the court in which the plea of *res judicata* is made has not the power to inquire again into that jurisdictional fact. We see no reason why a court, in the absence of an allegation of fraud in obtaining the judgment, should examine again the question whether the court making the earlier determination on an actual contest over jurisdiction between the parties, did have jurisdiction of the subject matter of the litigation. In this case the order upon the petition to vacate the confirmation settled the contest over jurisdiction.

“Courts to determine the rights of parties are an integral part of our system of government. It is just as important that there should be a place to end as that there should be a place to begin litigation. After a party has his day in court, with opportunity to present his evidence and his view of the law, a collateral attack upon the decision as to jurisdiction there rendered merely retries the issue previously determined. There is no reason to expect that the second decision will be more satisfactory than the first.” (Emphasis added.) (Many earlier U. S. Supreme Court decisions to the same effect are discussed at length.)

In affirming this Honorable Court of Appeals for the Ninth Circuit in its holding that jurisdiction of the subject

matter and parties once decided was not to be relitigated the United States Supreme Court decided the case of:

*Treinies v. Sunshine Mining Co.*, 308 U. S. 66, 84 L. Ed. 85 (1940) (U. S. Supreme Court—1940) (Affirming Court of Appeals for Ninth Circuit), 99 F. 2d 651.

The parties to the appeal attempted to relitigate the jurisdiction of the state court which had made a final judgment determining such question of jurisdiction. In refusing to permit relitigation of jurisdiction when the judgments of the state court had become final, the Supreme Court said:

“One trial of an issue is enough. ‘The principles of *res judicata* apply to questions of jurisdiction as well as to other issues,’ as well to jurisdiction of the subject matter as of the parties.” (Emphasis added.) (Citing authorities.)

The U. S. Supreme Court said in *Stoll v. Gottlieb*, *supra*, every court rendering a judgment tacitly if not expressly determines its jurisdiction over the parties and the subject matter.

The Court below in our present litigation in 1947 made the following finding:

“That the court has jurisdiction of the persons and subject matter involved.” [R. 2354.]

This proposed finding went before the U. S. Supreme Court on the writ of mandamus and/or prohibition and/or

injunction sought by appellant Fahey in 1947. The writ was denied by the U. S. Supreme Court in *Ex Parte Fahey*, 332 U. S. 258, 91 L. Ed. 2041 (1947).

Out of deference to the U. S. Supreme Court the District Court had not signed the proposed finding during the pendency of the writ. [R. 1448, 1450.] After the denial of the writ and the spreading of the mandate from the U. S. Supreme Court in September of 1947 [R. 2302], the District Court signed the findings of fact including the finding "that the court has jurisdiction of the persons and subject matter involved." [R. 2354, 2363.]

Appellants immediately appealed to this Honorable Court of Appeals from the judgment containing such findings and sought a stay of execution of said judgment. [R. 2423, 2440.] The Appeal was No. 11751 before this Honorable U. S. Court of Appeals for the Ninth Circuit.

Printed briefs were filed by appellants and appellees and the matter was argued before this court of appeals. The stay of execution was denied. [R. 2959.]

In the face of this finding, tested by a writ before the U. S. Supreme Court, and a denial of a stay by this Honorable Court of Appeals, appellants dismissed their prior appeal to this Court attacking the finding "that the court had jurisdiction of the persons and the subject matter involved." [R. 3550.] Such finding therefor became final and the law of this case.

The phrase used by the court below in finding that it had "jurisdiction of the subject matter and the parties in-



volved,” was not accidental but was the exact language used by the U. S. Supreme Court in the leading case of:

*Dugas v. American Surety Co.*, 300 U. S. 414, 81  
L. Ed. 727, U. S. Supreme Court—1936,

when on page 425 of the U. S. Reports, in disposing of attack on interpleader jurisdiction of the court below, the Supreme Court said:

“Plainly the court had jurisdiction of both the subject matter and the parties. . . .”

further, the Supreme Court said on the same page:

“. . . No appeal was taken from either decree. Therefore Dugas was bound by both decrees. Had he exercised his right to appeal he could have obtained a review of the rulings on his objection to being brought into the suit. . . . But these rulings were all made in the exercise of the court’s jurisdiction, were subject to challenge and re-examination only on appeal, and became conclusive on him in the absence of an appeal.” (Emphasis added.)

An appeal taken and dismissed of course has the same or greater finality than never taking an appeal.

The appellants prosecuting the writ through the U. S. Supreme Court and dismissing the prior appeals to this Court of Appeals are the only parties who could claim to be either immune from suit or indispensable. That is Fahey, the one-man “Home Loan Bank Board” and his appointee Ammann, appellants, successors in office to said

Fahey duly substituted as such by final orders of substitution of the District Court, after notice and opportunity to object, from which orders of substitution no appeals have ever been taken [R. 4547], are bound and forever precluded by the law of this case, and by *res adjudicata* "that the court below has jurisdiction of the persons and subject matter involved."

As was so aptly said by the Supreme Court in the *Gottlieb* case (*supra*):

" . . . It is just as important that there should be a place to end as that there should be a place to begin litigation. After a party has his day in court, with opportunity to present his evidence and his view of the law, a collateral attack upon the decision as to jurisdiction there rendered merely retries the issue previously determined. There is no reason to expect that the second decision will be more satisfactory than the first."

Appellants and their predecessors have had their day (actually their five years) in court. They have litigated the question of jurisdiction and lost in 1947 in the U. S. Supreme Court *Ex Parte Fahey*, 332 U. S. 258, 91 L. Ed. 2041 (1947); in 1948 in Appeals No. 11751 and 11867 in this Honorable Court of Appeals; in 1950 by their petitions for writ of prohibition, mandamus or other appropriate writ, presented in February, 1950, denied by this Court June 1, 1950 (no number assigned).

They have likewise litigated and lost the questions of jurisdiction at many of the approximately 100 hearings before the District Court.

Another case illustrating the power of a Court to make a final decision as to its jurisdiction over the parties and the subject matter is:

*American Surety Co. v. Baldwin*, 287 U. S. 156, 77 L. Ed. 231: U. S. Supreme Court—1932 (an appeal from Court of Appeals Ninth Circuit).

Appellant surety company executed an appeal bond in litigation then pending in the Idaho State Courts. The judgment upon which the stay bond was given was affirmed and without notice to the surety company, a judgment was entered against it in the state trial court. The surety company moved in the state trial court to vacate the judgment against it and thereby submitted to the state trial court for decision the question of the jurisdiction of that court to enter judgment against the surety company without notice. Proceedings resulted in a judgment that the state court did have jurisdiction over the surety company. The surety company then filed a new action in the U. S. District Court in Idaho seeking to enjoin the Idaho State Court from enforcing the judgment against the surety company. The United States District Court in Idaho denied the injunction and dismissed the action. This Honorable Court of Appeals for the Ninth Circuit reversed the U. S. District Court and held the injunction should have been granted. The U. S. Supreme Court on appeal from both the Idaho state proceedings and the U. S. District Court proceedings held that by sub-



mitting a motion to vacate before the Idaho state court, the surety company had submitted to that Court for decision the question of jurisdiction over the parties and subject matter and that the decision of the Idaho courts on that subject was final, and not open to litigation.

The United States Supreme Court said:

“ . . . For the federal remedy was barred by the proceedings taken in the state court which ripened into a final judgment constituting res judicata.”  
(Emphasis added.)

“ . . . But an adequate state remedy was available; and having invoked that and pursued it to final judgment, the Surety Company cannot escape the effect of the adjudication there. (Citing authorities.)”

“The Supreme Court of Idaho had jurisdiction over the parties and of the subject matter in order to determine whether the trial court had jurisdiction. Clearly, the motion to vacate, made on a general appearance, and the appeal from the order thereon, were no less effective to confer jurisdiction for that purpose than were the special appearance and motion to quash and dismiss held sufficient in Baldwin v. Iowa State Travelling Men’s Asso., 283 U. S. 522, 75 L. Ed. 1244, 51 S. Ct. 517. And there was an actual adjudication in the state court of the question of the jurisdiction of the trial court to enter judgment. The scope of the issues presented involved an adjudication of that issue. (Citing authorities.)”

JURISDICTION—POWER OF COURT TO DETERMINE ITS  
OWN JURISDICTION.

Appellants contends that the service of process upon their predecessor in Washington, D. C. by the U. S. Marshal under authority of various orders of the District Court authorizing such service, is invalid.

They presented these points by motions to quash such service and by motions to dismiss. [R. 391, 810.] These motions were decided against them by the court below. [R. 752.] On their previous appeals in 1946, 1947 and 1948 they raised these same questions of lack of jurisdiction, inadequacy of service, etc. They now seek on these present series of appeals in 1950 to relitigate the questions decided adversely to them in 1947 by the United States Supreme Court and by this United States Court of Appeals, Ninth Circuit.

That they cannot do so is held by the case of:

*Baldwin v. Iowa Travelling Men, Etc.*, 283 U. S. 522, 75 L. Ed. 1244 (1931).

Plaintiff sued in Missouri State Court, action was removed to United States District Court in Missouri. Defendant corporation appeared specially in the United States District Court in Missouri and moved to dismiss for inadequacy of service. Motion to quash service of summons was granted but dismissal was refused. Alias summons was issued and defendant again appeared specially and the question of jurisdiction of the District Court in Missouri, over the non-resident corporation, was submitted on motions, affidavits and briefs. The Court held it had jurisdiction and ordered non-resident defendant corporation to answer, which it declined to do and judgment was en-

tered against it. No appeal or other review from such judgment was ever sought. Plaintiff then brought action in the District Court in Iowa based upon the judgment of the District Court in Missouri. Defendant corporation defended upon lack of jurisdiction over it by the District Court in Missouri. Trial Court sustained the defense and dismissed the action. C. C. A. 8 affirmed the dismissal. Supreme Court reversed and held that the decision of the District Court in Missouri on the question of jurisdiction was conclusive and not subject to attack after it became final. The Supreme Court said:

“The ground of the motion made in the first suit is the same as that relied on as a defense to this one, namely, that the respondent is an Iowa corporation, that it never was present in Missouri, and that the person served with process in the latter state was not such an agent that service on him constituted a service on the corporation. . . .”

“. . . The respondent, on the other hand, insists that to deprive it of the defense which it made in the court below, of lack of jurisdiction over it by the Missouri district court, would be to deny the due process guaranteed by the 14th Amendment; but there is involved in that doctrine no right to litigate the same question twice. (Citing authorities.) . . .

“The substantial matter for determination is whether the judgment amounts to *res judicata* on the question of the jurisdiction of the court which rendered it over the person of the respondent. It is of no moment that the appearance was a special one expressly saving any submission to such jurisdiction. . . . The special appearance gives point



to the fact that the respondent entered the Missouri court for the very purpose of litigating the question of jurisdiction over its person. It had the election not to appear at all. . . .

In our own case, appellants, Fahey, Divers, *et al.*, had the election not to appear at all. They could have defaulted the proceedings in the court below. Had they done so, they would not have submitted to the court below by their special appearance, the question of the jurisdiction of that Court over their persons and over the subject matter of litigation. Instead of this, they appeared specially and in 1946 and 1947 raised the issues of jurisdiction. The District Court decided these issues against them and found “that the Court has jurisdiction of the persons and subject matter involved.” [R. 2354.] Appellants in the courts below and in their points on appeal and specifications of error in prior appeals had raised the questions of jurisdiction over their persons and over the subject matter.

By the dismissal of these appeals, appellants conceded the jurisdiction of the District Court over both their persons and the subject matter, and such holdings of the District Court became *res judicata* and law of this case. As was said in the *Baldwin v. Iowa Travelling* case, *supra*:

“ . . . It had also the right to appeal from the decision of the Missouri District Court. . . . It elected to follow neither of those courses, but after having been defeated upon full hearing in its contention as to jurisdiction, it took no further steps, and the judgment in question resulted.

“Public policy dictates that there be an end of litigation; that those who have contested an issue shall be bound by the result of the contest, and that

matters once tried shall be considered forever settled as between the parties. We see no reason why this doctrine should not apply in every case where one voluntarily appears, presents his case and is fully heard, and why he should not, in the absence of fraud, be thereafter concluded by the judgment of the tribunal to which he has submitted his cause."

Appellants undertook by special appearances to submit to the District Court below for decision the question of that court's jurisdiction over them and over the subject matter of the litigation. That Court has decided these questions adversely to appellants. [R. 2354.] Appellants in 1946, 1947 and 1948, appealed from such adverse decisions on the question of jurisdiction and have likewise tried out these issues on writs of prohibition, mandamus injunction, etc., both before United States Supreme Court and in this Honorable Court of Appeals for the Ninth Circuit. [R. 3550, 3976.] Appellants cannot relitigate these questions foerever. They have been before every Court available to them on the questions of jurisdiction of their persons and the subject matter. These issues at least, are forever settled and *res judicata* as between these appellants and present appellees.

As was said so aptly in *Baldwin v. Iowa Travelling Men, etc.*:

"The special appearance gives point to the fact that the respondent entered the . . . Court for the very purpose of litigating the question of jurisdiction over its person. It had the election not to appear at all."

Even if the statute under which the Court makes its decision is later held unconstitutional, the judgment is final unless timely appeal has been taken. Such a case is:

*Chicot, etc. v. Baxter State Bank*, 308 U. S. 371,  
84 L. Ed. 329, U. S. Supreme Court—1940.

Action to collect on county bonds. Defendant pleaded a judgment of the U. S. District Court under an Act of Congress providing for “municipal debt readjustments”. Plaintiffs had notice of those proceedings which had resulted in a decree barring and discharging the bonds. No appeal had been taken from this judgment. After the judgment had become final, in other proceedings, the U. S. Supreme Court had held the Act of Congress unconstitutional. Plaintiffs therefore claimed the judgment cancelling their bonds, was entirely void and a nullity and brought a new action to enforce the bonds.

The Supreme Court said:

“The courts below have proceeded on the theory that the Act of Congress, having been found to be unconstitutional, was not a law; that it was inoperative, conferring no rights and imposing no duties, and hence affording no basis for the challenged decree. . . . (Citing authorities.)”

“. . . The lower federal courts are all courts of limited jurisdiction, that is, with only the jurisdiction which Congress has prescribed. But none the less they are courts with authority, when parties are brought before them in accordance with the requirements of due process, to determine whether or not they have jurisdiction to entertain the cause and for this purpose to construe and apply the statute under



which they are asked to act. Their determinations of such questions, while open to direct review, may not be assailed collaterally.”

The finality of a court’s determination as to jurisdiction cannot be reversed even if the statute under which the Court acted is later held unconstitutional.

The appellants’ attack upon jurisdiction has also been made upon the question of who was served, where and how such service was made. [R. 391, 810.] The trial court’s ruling on such matters will not be reviewed by Appellate Courts. A case so holding, is:

*Graham v. Brotherhood of Locomotive Firemen & Enginemen*, 94 L. Ed. 22, 338 U. S. 232 (1949).

Negro firemen against their own union, seeking an injunction against racial discrimination. Motion to dismiss by the Brotherhood for:

- (a) Failure to serve process; and
- (b) Action improperly brought in District of Columbia, were both denied by United States Supreme Court.

The District Court had found process was properly served. The Court of Appeals had ordered dismissal because of improper venue in the District of Columbia.

The U. S. Supreme Court in its opinion, said:

“At the outset we are met by the contention in support of the judgment below that service of process upon the Brotherhood was not legally perfected, in which case, of course, it would not properly be before the Court at all. The District Court, after hearing evidence upon the subject, held that service upon the Brotherhood was sufficient. The Court of Appeals

noted that this question was raised but did not reverse upon this ground. Instead, it considered at length whether the action constitutionally could be entertained by the courts of the District of Columbia, a subject which would hardly be ripe for decision if the action had not been properly commenced anywhere. Moreover, its decision transferred the cause to the Northern District of Ohio, a power which it could exert only if it considered the service adequate to confer jurisdiction of the parties. We accept the ruling of the District Court on the adequacy of service, based as it is essentially on matters of fact, and undisturbed and impliedly approved by the Court of Appeals. We hold that personal jurisdiction of the respondent is established." (Emphasis added.)

The contention of failure to serve process, lack of jurisdiction, and similar objections, were first made by appellants in this litigation in 1946. [R. 391.] Their contentions were before the U. S. Supreme Court in 1947, and before this Honorable Court of Appeals in 1947 and 1948, on the prior appeals.

The District Court found by its previous orders and judgments, that it had jurisdiction. It expressly found that it had jurisdiction of the parties and subject matter involved. [R. 2354.]

These findings were not merely "impliedly approved" but by denial of writs and remands to the District Court for trial on the merits, have been expressly approved in 1947 by the U. S. Supreme Court and in 1947, 1948 and 1950, by this Honorable Court of Appeals.

Certainly if the objection of these appellants to the service of process upon them and to the jurisdiction of the District Court had any merit, somewhere in six prior

appeals and writs, such contentions would have been upheld.

To the preliminary injunction involved in this appeal, there are attached as exhibits, five previous orders of the District Court made during 1948 and 1949, each and all of which have become final and conclusive for failure to appeal therefrom. [R. 8310, 8362, 8377, 8399, 8526.] Somewhere within the lifetime of those who commenced this litigation nearly five years ago, there must come an end to the dilatory pleas of lack of jurisdiction. That end should be long past. When the Appeal No. 11751 was dismissed February 6, 1948, appellants had lost in the last court available to them, the contested issues of jurisdiction.

However, yet another appeal was dismissed by them. In November of 1947, the District Court made a number of orders [R. 3137-3139], permitting borrowers whose homes were unmarketable because of clouds on the title created by appellants, to intervene in the action and interplead into the registry of the Court, the amount due on the loans on these borrowers' homes. Such orders contained the following: ". . . the court grants said motion to intervene and accepts jurisdiction of said complaint in intervention. . . ." These orders were four out of a series totalling some fifty similar orders which had been made commencing July 13, 1946, and continuing until November 3, 1947. A schedule of such interventions, the date of the order, the amount deposited in the Registry of the Court and the number of appeals involved will be found at R. 8288 and 8291 which is Footnote 15 of the Preliminary Injunction appealed from in the present appeals. The record references to the full texts of each of such orders is as follows: R. 1604, 1733, 1874, 1591, 1737, 2519, 2539, 1617, 1731, 1376, 1284, 2433, 2034, 2393, 2079, 2377, 3136, 2424, 2443, 1724, 1738, 1561,



1719, 1669, 1723, 2388, 1656, 1648, 1086, 1259, 2382, 1081, 1261, 1462, 1509, 2372, 2055, 2041, 1861, 1643, 1735, 1867, 1854, 2367, 1575, 1721, 1630, 2048, 1714 and 2561. Appellants complied with the requirements of all of these orders and deposited into the Court the notes, deeds of trust and cash required by such orders. As a result thereof, there is approximately \$1,500,000.00 of cash and several hundred such notes and deeds of trust physically in the Registry of the District Court in the custody of the clerk thereof.

Appellants in 1947 and 1948 took their appeals to this Court of Appeals from a series of such intervention and interpleader orders, said appeal being numbered 11867. Among the points on appeal and assignments of error raised by appellants, was lack of jurisdiction of the District Court over the persons and over the subject matter. [See points on appeal, stipulations, etc. R. 3160, 3170.] After losing the writ in the U. S. Supreme Court on jurisdiction and after losing the stay of the order containing the finding "That the court has jurisdiction of the persons and subject matter involved," and after dismissing the appeal to such prior finding on jurisdiction, on February 25, 1948, appellants dismissed their prior appeal from the series of intervention and interpleader orders. [R. 3976.] Thereupon the jurisdiction of the District Court again became final and conclusive over these appellants and over this litigation.

The order restoring the Association, Exhibit A of the Preliminary Injunction presently appealed from [R. 8310],

the Preliminary Injunction against further prosecution of a diversionary action in the Northern District Court, Exhibit D of the Preliminary Injunction [R. 8362], the order requiring deposit of \$14,000,000.00 of notes, deeds of trust, U. S. Government Bonds and other assets into the Registry of the Court, Exhibit F of the Preliminary Injunction [R. 8399], the order for delivery of \$8,500,000.00 of such notes, and deeds of trust from the Registry of the Court to the possession and control of the Long Beach Association, appellees, and vesting title thereto in said Association, Exhibit H of said Preliminary Injunction appealed from [R. 8526], all have become final from lack of appeal therefrom, subsequent to the dismissal by appellants of their two prior appeals, Nos. 11751 and 11867 to the Honorable Court of Appeals.

Appellants have litigated past the point of exhaustion all possible questions of jurisdiction of the District Court over the parties and the subject matter. They have lost these issues in the U. S. Supreme Court, in this Honorable Court of Appeals and in the District Court, not once but on repeated occasions in 1947, 1948, 1949 and 1950.

With 20,000 pages of printed record, 100 court hearings, many final judgments and nearly five years of litigation, the dilatory pleas as to jurisdiction should at last be laid to rest and the litigation proceed to an adjudication on the merits. "It is just as important that there should be a place to end as that there should be a place to begin litigation."

## JURISDICTION—BY DOING BUSINESS.

Appellants Home Loan Bank Board, Federal Savings and Loan Insurance Corporation, Ammann and Bramley, all claim immunity from suit. They further claim that the Home Loan Bank Board is an indispensable party and therefore notwithstanding service of summons made upon other appellants within the district, because appellant Home Loan Bank Board does not physically and personally come to California, all are immune. [R. 823, 5073, 6978.] On this theory, appellant Home Loan Bank Board sends its deputies, Ammann, *et al.*, its *alter ego*, appellant Federal Savings and Loan Insurance Corporation and its creature, appellant, San Francisco Bank to perform its confiscations and claims that they all are immune from judicial process in the very district in which they seize and confiscate the real estate and personal property. [R. 823, 5073, 6978.]

The corporate and administrative structure of these interrelated and interlocking agencies and boards is demonstrative of the Congressional intent that all should respond to the courts of the district in which they do business and carry out their statutory functions.

Congress by statute, created the following situations:

A. The Federal Home Loan Banks created by the Federal Home Loan Bank Act (47 Stat. 725, 12 U. S. C. A. 1421-1439), by Section 1432, U. S. C. A. of such Act, Congress provided:

“The directors . . . shall . . . file with the board . . . an organization certificate . . . upon . . . filing of such organization certificate . . . such bank shall become . . . a body corporate, and . . . it shall have power . . . to



sue and be sued, to complain, and to defend in any court of competent jurisdiction, STATE OR FEDERAL, . . . ” (Emphasis added.)

Section 1437, U. S. C. A., creates the Federal Home Loan Bank Board, the predecessors of the Federal Home Loan Bank Administration (the one-man appellant Fahy), who in turn was the predecessor of the present appellants, Home Loan Bank Board.

Section 1437, U. S. C. A., reads in part as follows:

“For the purposes of this Act there shall be a board, . . . .”

Throughout the Act this board is given powers of approval, supervision and similar matters.

B. Home Owners Loan Act (12 U. S. C. 1462-1468). In 1933 Congress created the Home Owners Loan Corporation, Section 1462 U. S. C. A. of the Act provided (in subsection (a)):

“(a) The term ‘Board’ means the Federal Home Loan Bank Board created under the Federal Home Loan Bank Act.”

Section 1463(a) U. S. C. A. provided:

“The Board is hereby authorized and directed to create a corporation to be known as the Home Owners’ Loan Corporation, which shall be an instrumentality of the United States, which shall have authority to sue and to be sued in any Court of competent jurisdiction, Federal or State, and which shall be under the direction of the Board and operated by it under such bylaws, rules and regulations as it may prescribe for the accomplishment of the purposes and intent of this section. The members of

the Board shall constitute the Board of Directors of the Corporation and shall serve as such directors without additional compensation.”

Section 1464(a) U. S. C. A. provided:

“In order to provide local mutual thrift institutions in which people may invest their funds and in order to provide for the financing of homes, the Board is authorized, under such rules and regulations as it may prescribe, to provide for the organization, INCORPORATION, examination, operation, and regulation of associations to be known as ‘Federal Savings and Loan Associations,’ and to issue charters therefor, giving primary consideration to the best practices of local mutual thrift and home-financing institutions in the United States.” (Emphasis added.)

Although the Act does not specifically so provide, the five-man Home Loan Bank Board in adopting the form of charter for the Federal Savings and Loan Associations, thereby created, provided in Section 3—Objects and Powers—“ . . . the Association . . . shall have perpetual succession and power to . . . sue and be sued, complain and defend in any Court of law or equity.” (Emphasis added.)

All of the hundreds of Federal Savings and Loan Associations throughout the United States, thus by express authority of the Board, are sue or be sued corporations.

Pursuant to Section 1464(d), U. S. C. A. of the Home Owners’ Loan Act, appellant Home Loan Bank Board and its predecessors adopted regulations concerning appoint-

ment of conservators. One of them (Code of Federal Regulations, Title 24, Part 149, Section 149.5(b)) provides:

“The conservator may, under the direction and supervision of the General Counsel of the Home Loan Bank Board, institute, prosecute, maintain, defend, intervene, and otherwise participate in any and all actions, suits or other legal proceedings by and against the conservator or association . . . .”

By regulations (Code of Federal Regulations, Title 24, Part 100, Section 101.11) appellants Home Loan Bank Board appoint as their agents for the carrying on of the supervision of the Federal Savings and Loan Associations they have created, the President, Vice-President and other officers of the sue or be sued Federal Home Loan Banks. The supervisory authority of appellants Home Loan Bank Board is thus delegated to their local agents in the various states, territories and districts where such supervision is to be conducted.

In 1934 Congress adopted the National Housing Act (and in late years amended such act) (Stat. Ref., 48 Stat. 1246, 12 U. S. C. A. 1701-1743). By Section 1725(a) of said Act, there was created appellant Federal Savings and Loan Insurance Corporation. Section 402 (a) reads as follows:

“Sec. 1725(a), U. S. C. A. There is hereby created a Federal Savings and Loan Insurance Corporation (hereinafter referred to as the ‘Corporation’), which shall insure the accounts of institutions eligible for insurance as hereinafter provided and shall be under the direction of a board of trustees to be composed of five members and operated by it under such by-laws, rules, and regulations as it may prescribe for carrying



out the purposes of this title. The members of the Federal Home Loan Bank Board shall constitute the board of trustees of the Corporation and shall serve as such without additional compensation. The principal office of the Corporation shall be in the District of Columbia.”

Section 1725(c) U. S. C. A. reads in part as follows:

“Sec. 1725(c), U. S. C. A. Upon the date of enactment of this Act, the Corporation shall become a body corporate, and shall be an instrumentality of the United States and as such shall have power . . .

“(4) To sue and be sued, complain and defend, in any Court of law or equity, State or Federal.”

Section 1726(a) reads as follows:

“Sec. 1726(a), U. S. C. A. It shall be the duty of the corporation to insure the accounts of all Federal Savings and loan associations and it may insure the accounts of building and loan, savings and loan, and homestead associations and cooperative banks organized and operated according to the laws of the State, District, or Territory in which they are chartered or organized.” (Emphasis added.)

There is thus created an insurance corporation required by Statute to insure accounts and transact business THROUGHOUT all of the states, territories, or districts of the United States wherein there are located any Federal Savings and Loan Associations or other insured savings institutions.

The result of this mass of legislation by Congress and by appellant Home Loan Bank Board and its predecessors can be summarized as follows:

There are created:

1. Twelve Federal Home Loan Banks under the supervision and direction of appellants Home Loan Bank Board each of which are sue or be sued corporations.

2. There is created the Home Owners Loan Corporation, transacting business consisting of relieving distressed homeowners by refinancing their mortgages throughout all of the states, territories and districts of the United States. Home Owners Loan Corporation is a sue or be sued corporation.

3. There is created Federal Savings and Loan Insurance Corporation whose duty it is to insure the safety of the savings of all of the citizens of the states, territories and districts of the United States, wherein are created federal savings and loan associations or other insured institutions. Federal Savings and Loan Insurance Corporation is a sue or be sued corporation.

4. There are created hundreds of federal savings and loan associations under the direct supervision and control of appellants Home Loan Bank Board, which supervision is to be exercised at the offices of such federal associations throughout all of the states, territories and districts of the United States. All Federal Savings and Loan Associations are sue or be sued corporations.

5. There is created a system of conservators or receivers either or both of which are sue or be sued, appointed by appellants Home Loan Bank Board and can only exercise their delegated authority by seizing possession of real or personal property in the various states, territories and districts of the United States.

Appellants Home Loan Bank Board are (1) the approving and supervising board over the 12 Federal Home Loan Banks; (2) the sole directors of the Home Owners' Loan Corporation and its only governing authority; (3) the sole trustees of the Federal Savings and Loan Insurance Corporation and its only governing authority; (4) the incorporators and creators of the hundreds of Federal Savings and Loan Associations which are under their direct supervision and control; (5) appellants Home Loan Bank Board appoint conservators and receivers for many of this mass of "sue or be sued" corporations, yet appellants Home Loan Bank Board claim that they alone of this entire organization are immune from process and exempt from suit.

The entire statutory scheme of the Federal Home Loan Bank Act, Home Owners Loan Act, National Housing Act, and related Acts of Congress, was to create government agencies and corporations for the particularly local business of home financing, of necessity affecting ownership, title and possession of real property, mortgages, trust deeds and other encumbrances on real property. This was



recognized in Re-Organization Plan No. 3, 12 F. R. 4981, when:

(a) The Home Loan Bank Board was created by combining the functions of:

- (1) The sue or be sued H. O. L. C.
- (2) The sue or be sued F. S. & L. Ins. Co.;
- (3) The supervision of the sue or be sued F. H. L. B.'s;
- (4) The supervision of the sue or be sued Federal savings and loan associations;
- (5) The appointment or removal of the sue or be sued conservator and sue or be sued receivers.

The sue or be sued Federal Housing Administration was likewise consolidated into the same overall agency, but as a separate branch thereof.

Appellants contend that the intent of Congress was, out of this mass of sue or be sued corporations, agencies, appointees, subsidiaries and delegates, that they alone should be immune from suit and beyond the reach of all courts.

It is obvious that Appellants Home Loan Bank Board, through its manifold agents in their various capacities, have at all times been and now are doing business throughout the 48 States, and particularly as concerns this litigation, in the State of California and in the District of the Court below.

Under these circumstances, the following statutes and cases illustrate that the sue or be sued agencies and corporations, so doing business can be called into the courts of the district or territory where such business

is done with particular reference to causes of action arising out of such business so done in such district.

New Title 28, U. S. C., Section 1391, subdivision (c) reads in part as follows:

“A corporation may be sued in any judicial district in which it . . . is doing business, and such judicial district shall be regarded as the residence of such corporation for venue purposes.”

F. R. C. P. Rule No. 4, Process, Subdivision (d) Summons: Personal Service.

“The summons and complaint shall be served together . . . Service shall be made as follows:

. . . . .

“(3) Upon a domestic or foreign corporation . . . by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process . . .

“(5) Upon an officer or agency of the United States, . . . If the agency is a corporation the copy shall be delivered as provided in paragraph (3) of this subdivision of this rule.

. . . . .

“(e) Same: Other Service. Whenever a statute of the United States or an order of court provides for service of a summons, or of a notice, or of an order in lieu of summons upon a party not an inhabitant of or found within the state, service shall be made under the circumstances and in the manner prescribed by the statute, rule, or order.

“(f) Territorial Limits of Effective Service. All process other than a subpoena may be served any-

where within the territorial limits of the state in which the district court is held, and when a Statute of the United States so provides, beyond the territorial limits of that State. . . .” (Emphasis added.)

Full compliance with these statutes and rules was had throughout these proceedings. [R. 65-84; 786-787; 795-804, 2536-2554; 2556-2557; 5298-5302, 5357, 5393; 5468.] Appellants Home Loan Bank Board, Federal Savings and Loan Insurance Corporation, Divers, Adams, LaRoque, Ammann, Bramley, San Francisco Bank, *et al.*, are by the express requirements of the statutes (including, Home Owners’ Loan Act, National Housing Act, Federal Home Loan Bank Act, etc., and the various regulations and their amendments thereto), doing business within the State of California.

Such “doing business” consists of the supervision, regulation, creation, dissolution, liquidation, re-organization, consolidation, and similar acts of business of the Federal Home Loan Banks, Federal Savings and Loan Associations, and the promotion of thrift and home-building. Such business, of necessity, deals with and immediately and vitally affects ownership, possession and title to thousands of parcels of real property in the State of California, the homes of the borrowers from the federal savings and loan associations and the state savings and loan associations, who are members of the Federal Home Loan Banks. The re-discount, in multi-million dollar amounts of such home mortgages to the home financing agencies is the



business for which appellants were created by Acts of Congress.

The insurance of the safety of the accounts of the 16,000 depositors of appellee Long Beach Association, and of the hundreds of thousands of depositors in the other insured institutions throughout California, is the doing business within the State of California ordered by Congress in the above statutes, to be performed by appellants Divers, Adams, and LaRoque, as sole trustees of the “sue or be sued” appellant Federal Savings and Loan Insurance Corporation, as supervisors and regulators of the “sue or be sued” Federal Home Loan Banks and Federal Savings and Loan Associations.

In order to “do business” in California as required by statutes of Congress, appellants maintain their staff of examiners of insured Savings and Loan Associations. They have their managing agent at Los Angeles and at San Francisco. (Code of Fed. Reg., Title 24, Part 100, Section 101.11.) The officers, President, Secretary, Vice-President, etc., of appellant San Francisco Bank, or of whatever Federal Home Loan Bank exists, are the agents and representatives transacting the business of appellants Home Loan Bank Board in its various capacities, as trustees of appellant Federal Savings and Loan Insurance Corporation, as members of the Home Loan Bank Board; as directors of the Home Owners’ Loan Corporation; and in the various other “sue or be sued” corporate agencies of other functions of such appellants. (Code of Fed. Reg., Title 24, Part 100, Section 101.11.)

The following cases will demonstrate the fallacy of the contentions of appellants that they are immune from suit in such business undertakings, or that they can be sued, if at all, only at Washington, D. C., 3,000 miles dis-

tant. These claims have been put forth by other Government agencies and corporations, as well as by private corporations. A leading case is:

*Seven Oaks v. F. H. A.*, 171 F. 2d 947 (C. C. A. 4th, 1948).

Action for damages and to establish trust in real estate, etc., in United States District Court in Virginia against F. H. A. which moved to dismiss on the ground that it could not be sued outside of the District of Columbia. Lower Court dismissed and was reversed by C. C. A. 4th, which said:

“ . . . The complaint alleges three causes of action, the first two of which ask damages on account of alleged negligence and wrongful conduct and the third seeks to have a trust in favor of plaintiff declared with respect to certain real estate in the district owned by the Housing Administration. . . .

(1) We think that the venue was proper and that there was error in dismissing the suit. The Eastern District of Virginia was the district in which the cause of action arose, the Housing Administration was carrying on business in that district and one of the purposes of the suit was to have a trust declared on real estate there situate. We think that the statute permitting suit against the Housing Administration authorized suit within the district; that irrespective of this, the suit was properly brought within the district because of the venue statute relating to corporations; and that, in any view of the case, it was properly brought as to the third cause of action alleged which was a local action relating to real estate within the district.

The statute giving consent to suit is more than a mere waiver of immunity. It provides not only that the agency may be sued but also in what courts suit may be instituted. The exact language of the statute is: "The Administrator shall \* \* \* be authorized, in his official capacity, to sue and be sued in any court of competent jurisdiction, State or Federal." 49 Stat. 722, 12 U. S. C. A. §1702. . . . but where the Housing Administration is doing business within a district and has present an agent in charge of its affairs, there is no reason why service of process cannot be made upon it and upon the United States, whose representative it is, in accordance with the provisions of Rule 4(d)(4) and (5), Federal Rules of Civil Procedure, . . .

"(2) If, however, the statute authorizing suit against the Housing Administration be regarded as a mere waiver of immunity, we think that suit within the district was authorized on the ground that the Administration is to be regarded as a public corporation within the meaning of the venue statutes and was suable within the district because engaged in business there. While the Housing Administration may not be a corporation in the strict sense of the word, it is given many powers of corporations; and it is worth noting that the power to sue and be sued was conferred upon it by a provision of the statute creating a federal corporation, the Federal Deposit Insurance Corporation, 49 Stat. 722. It is listed by the Supreme Court itself among the federal corporations created by recent acts of Congress (Keifer & Keifer v. Reconstruction Finance Corporation, 306 U. S. 381, 390, 59 S. Ct. 516, 83 L. Ed. 784); and that court has held that suit may be brought against it in its agency name just as though it were a corpo-



ration. Federal Housing Administration, Region No. 4, v. Burr, 309 U. S. 242, 60 S. Ct. 488, 84 L. Ed. 724. We see no reason why such an agency should not be treated, for purposes of suits against it, as a federal corporation within the meaning of the venue statute which provides that 'a corporation may be sued in any judicial district in which it \* \* \* is doing business.' 28 U. S. C. A. §1391(c).

(3, 4) The contention that it was the intention of Congress that the venue of suits against the Housing Administration be limited to the District of Columbia, the official residence of the Administrator, or that the Administration should have the discretion to say when it might be sued elsewhere by waiving venue, will not bear analysis. Congress certainly knew, when providing for suit in state courts, that there were no such courts in the District of Columbia; and when it provided that a great business agency authorized to engage in business throughout the country might sue and be sued like an ordinary business corporation, it could hardly have intended that persons in California, Hawaii or Alaska, desiring to exercise the right to sue must travel to the District of Columbia to do so. Cf. Ferguson v. Union National Bank of Clarksburg, 4 Cir. 126 F. 2d 753, 757.

. . .

"It must be conceded by everyone that it is highly desirable that a federal agency such as the Housing Administration be suable in the district where it is doing business on causes of action arising out of the business done there." . . .

"(5) Irrespective of other considerations, the fact that the suit sought to impress a trust on real estate

within the district was sufficient to satisfy the venue requirements as to that cause of action. See 28 U. S. C. A. §§1392(b), 1655 (old section 118) (citing authorities.) Consent that the Housing Administration be sued had been expressly given. 49 Stat. 722. Federal Housing Administration, Region No. 4 v. Burr, 309 U. S. 242, 60 S. Ct. 488, 84 L. Ed. 724. And the agency had been duly served with process by service upon the state director and upon the United States Attorney and the Attorney General of the United States. Federal Rules Civil Procedure 4(d)(4) and (5).” . . .

“ . . . We have not considered and make no intimation as to the right of plaintiff to maintain suit on the causes of action alleged, nor as to the validity of the defenses asserted against them. We prefer to consider questions with regard to these matters in the light of the facts as they may be developed in the further hearing of the case.” . . . (Emphasis added.)

In our present appeals the statute submitting appellant F. S. & L. Ins. Corp. to suit is even broader than that quoted in *Seven Oaks v. F. H. A.*, Section 402(c) (12 U. S. C. A., 1725(c)), National Housing Act, insurance of savings and loan accounts, reads: “Upon the date of enactment of this act the corporation shall become a party corporate and shall be an instrumentality of the United States and shall have power to sue and be sued, complain and defend in any court of law and equity, State or Federal.” . . .

The language “State or Federal” commented upon by the Fourth Circuit as requiring the agency or corporation to submit to suit outside the District of Columbia because

there are no State courts within the District, has equal force and application to our present appeals.

The additional language "Congress . . . could hardly have intended that persons in CALIFORNIA . . . desiring to exercise the right to sue must travel to the District of Columbia to do so" should be decisive of all questions of indispensable parties raised by appellants in these present appeals.

One of the latest U. S. Supreme Court decisions on "doing business" is:

*Travelers Health Assoc. v. Virginia*, 339 U. S. 643, 94 L. Ed. 1154 (U. S. Supreme Court—June 5, 1950).

Appellant, a Nebraska NON-profit membership CORPORATION, conducted health insurance business in Virginia by mail. It had no agent in Virginia. Its membership within the State of Virginia was about 800. Virginia laws required a permit from the Corporation Commission for such activities, and provided after notice and hearing on the merits, that the Corporation Commissioner could issue a cease and desist order, restraining violation of the Act. Service of process by registered mail was authorized.

Proceedings were instituted against Travelers Health and its treasurer, individually and as treasurer. Having received notice only by registered mail, they appeared specially for the sole purpose of objecting to the jurisdiction of Virginia and its State Corporation Commission, and moved to set aside and quash service of summons.

Commission overruled their objections and issued a cease and desist order. Order was affirmed by Virginia



Courts and attacked in U. S. Supreme Court on the ground of denial of due process.

Virginia Law required non-residents who sought a permit to do business in the state, to name the Secretary of State an agent for service of process. No such nomination had ever been made.

The U. S. Supreme Court upheld Virginia's authority to issue the order (in effect an injunction), and said:

“ . . . basic contention is that all their activities take place in Nebraska, and that consequently Virginia has no power to reach them in cease and desist proceedings to enforce any part of its regulatory law. We cannot agree with this general due process objection, for we think the state has power to issue a ‘cease and desist order’ enforcing at least that regulatory provision requiring the Association to accept service of process by Virginia claimants on the Secretary of the Commonwealth.”

“ . . . And in *International Shoe Co. v. Washington*, 326 U. S. 310, 316, 90 L. Ed. 95, 102, 66 S. Ct. 154, 161 A. L. R. 1057, this Court, after reviewing past cases, concluded: ‘due process requires only that in order to subject a defendant to a judgment *in personam*, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend “traditional notions of fair play and substantial justice.” ’ ”

\* \* \* \* \*

“Moreover, if Virginia is without power to require this Association to accept service of process on the Secretary of the Commonwealth, the only forum for injured certificate holders might be Nebraska. Health benefit claims are seldom so large

that Virginia policyholders could afford the expense and trouble of a Nebraska law suit. In addition suits on alleged losses can be more conveniently tried in Virginia where witnesses would most likely live and where claims for losses would presumably be investigated . . . And prior decisions of this Court have referred to the unwisdom, unfairness and injustice of permitting policyholders to seek redress only in some distant state where the insurer is incorporated. The Due Process Clause does not forbid a state to protect its citizens from such injustice.

“There is, of course, one method by which claimants could recover from appellants in Virginia courts without the aid of substituted service of process: certificate holders in Virginia could all be garnished to the extent of their obligations to the Association. (Citing authorities.) . . . While such an indirect procedure would undeniably be more troublesome to claimants than the plan adopted . . . it would clearly be even more harassing to the Association and its Virginia members . . .”

“We hold that Virginia’s subjection of this Association to the jurisdiction of that state’s Corporation Commission in a §6 proceeding is consistent with ‘fair play and substantial justice,’ and is not offensive to the Due Process Clause. . . .”

“It is also suggested that service of process on appellants by registered mail does not meet due process requirements. What we have said answers this contention insofar as it alleges a lack of state jurisdiction because appellants were served outside Virginia. If service by mail is challenged as not providing adequate and reasonable notice, the contention has been answered by *International Shoe Co. v.*

Washington, *supra* (326 U. S. 320, 321, 90 L. Ed. 104, 105, 66 S. Ct. 154, 161 A. L. R. 1057). See also *Mullane v. Central Hanover Bank & T. Co.*, 339 U. S. 306, *ante*, 865, 70 S. Ct. 652.”

A recent leading case on “doing business” is:

*Int. Shoe Co. v. Washington*, 326 U. S. 310, 90 L. Ed. 95 (U. S. Supreme Court—1945).

State of Washington assessed appellant for employees’ unemployment contributions. Appellants objected that it was denied due process because it was not doing business in Washington, had not appointed Washington agent for service of process, nor otherwise submitted to the jurisdiction.

The Court said:

“In this case notice of assessment for the years in question was personally served upon a sales solicitor employed by appellant in the State of Washington, and a copy of the notice was mailed by registered mail to appellant at its address in St. Louis, Missouri. Appellant appeared specially before the office of unemployment and moved to set aside the order and notice of assessment on the ground that the service upon appellant’s salesman was not proper service upon appellant; that appellant was not a corporation of the State of Washington and was not doing business within the state; that it had no agent within the state upon whom service could be made;  
. . .

“. . . Appellant is a Delaware corporation, having its principal place of business in St. Louis, Missouri, . . .”

“Appellant has no office in Washington and makes no contracts either for sale or purchase of merchandise there. It maintains no stock of merchandise in



that state and makes there no deliveries of goods in intrastate commerce. . . .”

“. . . No salesman has authority to enter into contracts or to make collections.”

\* \* \* \* \*

“. . . due process requires only that in order to subject a defendant to a judgment *in personam*, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice.’ (citing authorities) . . .”

“‘Presence’ in the state in this sense has never been doubted when the activities of the corporation there have not only been continuous and systematic, but also give rise to the liabilities sued on even though no consent to be sued or authorization to an agent to accept service of process has been given. (Citing authorities.) . . .”

“But to the extent that a corporation exercises the privilege of conducting activities within a state, it enjoys the benefits and protection of the laws of that state. The exercise of that privilege may give rise to obligations and so far as those obligations arise out of or are connected with the activities within the state, a procedure which requires the corporation to respond to a suit brought to enforce them can, in most instances, hardly be said to be undue. (Citing authorities.) . . .”

“Applying these standards the activities carried on in behalf of appellant in the State of Washington were neither irregular nor casual. They were systematic and continuous throughout the years in question. . . . The obligation which is here sued upon arose out of those very activities. It is evident

that these operations establish sufficient contacts or ties with the state of the forum to make it reasonable and just according to our traditional conception of fair play and substantial justice to permit the state to enforce the obligations which appellant has incurred there. Hence we cannot say that the maintenance of the present suit in the State of Washington involves an unreasonable or undue procedure.

“We are likewise unable to conclude that the service of the process within the state upon an agent whose activities establish appellant’s ‘presence’ there was not sufficient notice of the suit, or that the suit was so unrelated to those activities as to make the agent an inappropriate vehicle for communicating the notice. It is enough that appellant has established such contacts with the state that the particular form of substituted service adopted there gives reasonable assurance that the notice will be actual. . . . (citing authorities.) Nor can we say that the mailing of the notice of suit to appellant by registered mail at its home office was not reasonably calculated to apprise appellant of the suit. . . . (citing authorities.)”

Service of process upon a corporation where it contracts the liability sued on, is a remedial enactment to be liberally construed, was the holding of:

*United States v. Scophony Corp.*, 333 U. S. 795;  
92 L. Ed. 1091 (U. S. Supreme Court, 1948).

Anti-trust suit against British corporation, served in U. S. District Court in New York. The statute, Clayton Anti Trust Act, provided for venue over the corporation wherever it may be found or transacts business. Compare with New Title 28, Section 1391(c) which reads: “A corporation may be sued in any judicial district in

which it is . . . doing business,” and with F. R. C. P. Rule 4(d), which reads: “Service shall be made . . . upon a domestic or foreign corporation . . .” is “by delivering the copy of the summons and complaint to an officer, a managing or general agent. . . .”

The question in the *Scophony* case was definitions of “found” and “transacting business.” The similarity between “transacting business” and “doing business” makes the decision applicable to this appeal.

The Supreme Court said:

“This construction gave the words ‘transacts business’ a much broader meaning for establishing venue than the concept of ‘carrying on business’ denoted by ‘found’ under the pre-existing statute and decisions. The scope of the addition was indicated by the statement ‘that a corporation is engaged in transacting business in a district . . . if in fact, in the ordinary and usual sense, it ‘transacts business’ therein of any substantial character.’ *Id.* 273 U. S. at 373, 71 L. ed. 689, 47 S. Ct. 400. (Emphasis added.)”

“Thus, by substituting practical, business conceptions for the previous hair-splitting legal technicalities encrusted upon the ‘found’-‘present’-‘carrying-on-business’ sequence, the Court yielded to and made effective Congress’ remedial purpose. Thereby it relieved persons injured through corporate violations of the antitrust laws from the ‘often insuperable obstacle’ of resorting to distant forums for redress of wrongs done in the places of their business or residence. A foreign corporation no longer could come to a district, perpetrate there the injuries outlawed, and then by retreating or even without retreating to its headquarters defeat or delay the retribution due.”



One of the first cases in which the Supreme Court recognized the modern trend that corporations are amenable to suit wherever they do business was:

*Eastman Kodak v. Southern Photo*, 273 U. S. 359;  
71 L. Ed. 684 (U. S. Supreme Court—1927).

The Supreme Court said at page 689:

“That Congress may, in the exercise of its legislative discretion, fix the venue of a civil action in a federal court in one district, and authorize the process to be issued to another district in which the defendant resides or is found, is not open to question. *United States v. Union P. R. Co.*, 98 U. S. 569, 604, 25 L. Ed. 143, 151; *Robertson v. Railroad Labor Bd.*, 268 U. S. 619, 622, 69 L. Ed. 1119, 1121, 45 Sup. Ct. Rep. 621.”

In our present appeals, all appellants are “doing business” or “transacting business” within the territory of the district of the Court below and within the State of California. Of necessity, such business is local. It consists of the financing of homes, by mortgages, trust deeds, and other encumbrances upon real property.

Causes of action arising from such business, involving the title to such deeds of trust and real property, must be enforceable in the district where the real property is physically situated, or they cannot be enforced anywhere. A judgment of a Washington D. C. Court, which might bind appellants Home Loan Bank Board, would be worthless against appellants Ammann, San Francisco Bank, Los Angeles Bank and other claimants.

Only a Court having *in rem* jurisdiction over the real property involved, can adjudicate in one action, as between all the parties. Jurisdiction is either in the Court below in California, or for all practical purposes, there is no jurisdiction in any Court.

THE COURT HAD JURISDICTION TO HEAR THE  
CASE ON THE MERITS TO DECIDE ITS JURIS-  
DICTION.

If, as alleged, appellants acted unconstitutionally, beyond their statutory or other authority, arbitrarily, capriciously and maliciously, such actions are not protected by a claim of immunity as officers of the United States. If the allegations of the complaints, cross-claims and other pleadings, are true, the Court had jurisdiction over all appellants. If the allegations of the pleadings are not sustained, jurisdiction over some appellants may be lacking. But this question can only be decided by a decision of the merits in:

*Land v. Dollar*, 330 U. S. 731, 91 L. Ed. 1209, U. S. Supreme Court—1947.

The Supreme Court said:

“This is the type of case where the question of jurisdiction is dependent upon the decision of the merits.” (Citing authorities.)

The Court below stated in its conclusion No. 4 [R. 8297] as follows:

“That some of the issues in the main litigation involved, will require a determination of the case on its merits, before a final determination can be made as to the jurisdiction of this Court with relation to certain situations and phases of the litigation, which raise the question of jurisdiction.”

This whole subject is treated at greater length and the cases briefed in the section of this brief “Appellants are not Immune from Suit,” to which reference is made for complete treatment.

III.

**APPELLANTS ARE NOT IMMUNE FROM SUIT.**

Appellants maintain that the appellant conservator, Ammann, appellants Fahey, Divers, Adams, LaRoque, members or former members of the Home Loan Bank Board, the appellant Federal Savings and Loan Insurance Corporation, and appellant Federal Home Loan Bank of San Francisco, are each and all immune from suit, on each and all of the causes of action stated by the numerous complaints, cross-claims, amended and supplemental.

They base their claim of immunity upon the ground that the sovereign is immune to suit. Appellants' claim of immunity is made in blanket form.

To properly refute this claim, it is necessary that the situation of the several appellants be considered individually.

The Federal Home Loan Bank of San Francisco and Federal Savings and Loan Insurance Corporation are both "sue or be sued" corporations, incorporated as such under Acts of Congress. By the express terms of such acts, the sovereign's immunity from suit is waived. (47 Stat. 725; 12 U. S. C. A. 1421-1439; 48 Stat. 1246; 12 U. S. C. A. 1701-1743.)

By the express terms of the charter (organization certificate) of the Federal Home Loan Banks of Portland [R. 7236], San Francisco or Los Angeles [R. 7231], whichever of the three exists, immunity from suit is expressly waived.



By the express terms of the regulations under which the conservator claimed to act, immunity to suit is likewise expressly waived. Code of Federal Regulations, Title 24, Chapter 1(C). The present regulation No. 149.5 "Powers and Duties of Conservator", subsection (f) reads as follows:

"The Conservator . . .

"(f) May, under the direction and supervision of the General Counsel of the Home Loan Bank Board, institute, prosecute, maintain, defend, intervene, and otherwise participate in any and all actions, suits or other legal proceedings by and against the conservator or association or in which the conservator, the association, or its creditors or members, or any of them, shall have an interest, and in every way to represent such association, its members and creditors;"

Immunity from suit is not a doctrine favored by either Congress or the courts. Recent sessions of the United States Supreme Court have refused immunity to agencies and corporations engaged in the general business world.

Congress by express statute, has waived immunity from suit of appellants and appellee Federal Home Loan Banks and appellant Federal Savings and Loan Insurance Corporation. Appellants Home Loan Bank Board have themselves waived the immunity from suit of appellant conservators Ammann and Bramley. All of the appellants, except Home Loan Bank Board, are the agents and personal appointees of Home Loan Bank Board. They exercise their authority only under appellant Home Loan Bank

Board's direct supervision and express approval. Appellant Home Loan Bank Board thus directs and controls its agents and appointees in defending and maintaining this litigation. Yet appellant Home Loan Bank Board and its members attempt to claim that they themselves, who are the "master minds" of this litigation, are completely immune from, and beyond the power of, the very courts into which they send their agents and deputies to defend the confiscations, the subject of this litigation.

Even had such immunity existed, it was of course waived and abandoned by the general appearance of appellants Home Loan Bank Board and its members, made before the District Court by the filing of Resolution No. 388, which by its terms required that a certified copy thereof be filed with the court "forthwith." [R. 3404.]

The attitude of Congress towards agencies' immunity from suit is aptly expressed by subdivision (c) of Section 10 of the Administrative Procedure Act (1009 U. S. C. A.), which reads:

"Reviewable Acts. Every agency action made reviewable by statute and every final agency action for which there is no other adequate remedy in any court shall be subject to judicial review."

The English language could not be plainer. If there is no other adequate remedy for judicial review, the Administrative Procedure Act creates one.

The claim of immunity from suit by government officials and government corporations, has been rejected by a

series of Supreme Court decisions, one of the latest of which is:

*Land v. Dollar*, 330 U. S. 731, 91 L. Ed. 1209 (1947),

in which the United States Supreme Court in 1947, at the same term in which it decided *Fahey's* first appeal and remanded this present case to the U. S. District Court at Los Angeles for a trial on the merits, flatly rejected the doctrine of immunity from suit by wrongdoing government officials.

The U. S. Supreme Court said:

“ . . . this is the type of case where the question of jurisdiction is dependent on decision of the merits.

“The allegations of the complaint, if proved, would establish that petitioners are unlawfully withholding respondents' property under the claim that it belongs to the United States. . . .”

“ . . . But public officials may become tort-feasors by exceeding the limits of their authority. And where they unlawfully seize or hold a citizen's realty or chattels, recoverable by appropriate action at law or in equity, he is not relegated to the Court of Claims to recover a money judgment. The dominant interest of the sovereign is then on the side of the victim who may bring his possessory action to reclaim that which is wrongfully withheld. . . .

“We intimate no opinion on the merits of the controversy. We only hold that the District Court has jurisdiction to determine its jurisdiction by proceeding to a decision on the merits.” (Emphasis added.)



## IMMUNITY FROM SUIT.

The ultimate result of the *Land v. Dollar* litigation was the recovery by the Dollar Steamship Company of a judgment for return of its stock alleged by the members of the Maritime Commission to have become the property of the United States. Immunity from suit has also been decided adversely to government officials making such claim in:

*Keifer v. R. F. C.*, 306 U. S. 381, 83 L. Ed. 784,  
U. S. Supreme Court—1939.

Plaintiffs sued two government corporations for damages for negligence in the care of livestock. Congress had in the Act creating R. F. C., made it a sue or be sued corporation. The other defendant, Regional Agricultural Credit had been organized by R. F. C. pursuant to Act of Congress, which Act did not contain any sue or be sued waiver of sovereign immunity. District Court in Nebraska and C. C. A. 8, both held the government corporations immune from suit for damages and dismissed plaintiffs' complaint.

Both R. F. C. and Regional were completely government owned corporations. All stock of both being by U. S. U. S. Supreme Court in an unanimous opinion reversed, and ruled both government corporations liable for damages exactly as any other litigant. In doing so, the U. S. Supreme Court announced that the modern trend was away from immunity to suit unless expressly conferred by direct enactment of Congress.

The Supreme Court said:

"Therefore, the government does not become the conduit of its immunity in suits against its agents

or instrumentalities merely because they do its work. (Citing Authorities.) But this would not confer on such corporations legal immunity even if the conventional to-sue-and-be-sued clause were omitted. In the context of modern thought and practice regarding the use of corporate facilities, such a clause is not a ritualistic formula which alone can engender liability. . . .”

“Congress may, of course, endow a governmental corporation with the government’s immunity. But always the question is: has it done so? (Citing authorities.) This is our present problem. Has Congress endowed Regional with immunity in the circumstances which enveloped its creation? . . .”

“. . . In spawning these corporations during the past two decades, Congress has uniformly included amendability to law. Congress has provided for not less than forty of such corporations discharging governmental functions, and without exception the authority to-sue-and-be-sued was included. Such a firm practice is partly an indication of the present climate of opinion which has brought governmental immunity from suit into disfavor, partly it reveals a definite attitude on the part of Congress which should be given hospitable scope. It is noteworthy that the oldest surviving government corporation—the Smithsonian Institution—has several times been in the law courts, even in the absence of explicit authority and although the general feeling regarding governmental immunity was very different in 1846 from what it has become in our own day. (Citing authorities.)”

“To give regional an immunity denied to more than two score corporations, each designed for a purpose of government not relevantly different from that which occasioned the creation of

Regional, is to impute to Congress a desire for incoherence in a body of affiliated enactments and for drastic legal differentiation where policy justifies none. . . .”

“Congress has embarked upon a generous policy of consent for suits against the government sounding in tort even where there is no element of contract. . . .”

“. . . Congress has thus clearly manifested an attitude which serves as a guide to the scope of liability implicit in the general authority it has conferred on governmental corporations to sue and be sued. We should be denying the recent trend of Congressional policy to relieve Regional from liability. This compels us to reverse the judgment of the court below.

“Reversed.”

It is interesting to observe that in *Keifer v. R. F. C.*, an executive order had transferred control of one of the government corporations to the Farm Credit Administration prior to the infliction of damages. The same R. F. C. HELD LIABLE TO SUIT FOR DAMAGES IN THE KEIFER CASE, WAS AT THE TIME OF THE SEIZURES OF THE APPELLEES LOS ANGELES BANK AND LONG BEACH ASSOCIATION, OWNER OF ALL OF THE GOVERNMENT OWNED STOCK IN THE PORTLAND LOS ANGELES BANKS, AGGREGATING \$9,967,-900.00 IN THE LOS ANGELES BANK AND \$5,960,000.00 IN THE PORTLAND BANK A COMBINED TOTAL OF APPROXIMATELY FIFTEEN MILLION DOLLARS. R. F. C. CONTINUED TO BE THE OWNER OF SUCH STOCK IN THE APPELLANT SAN FRANCISCO BANK UNTIL AFTER THE REMOVAL OF THE CONSERVATOR BY ORDER OF THE COURT BELOW.



Sue or be sued includes garnishment and every other judicial process. It is not limited to actions in which the Government agency or corporation is merely a party. Willingness to waste thousands of dollars in useless litigation is not confined to the Government officials in our present *Mallonee v. Fahey* appeal. For a \$71.11 garnishment, the F. H. A. took a case through the U. S. Supreme Court. Such a case was:

*F. H. A. v. Burr*, 309 U. S. 242, 84 L. Ed. 724 (1940).

Plaintiffs had obtained a judgment against an employee of F. H. A. and garnished his salary by service of process on F. H. A. The total amount was \$71.11.

The F. H. A. appealed to the U. S. Supreme Court.

In holding the F. H. A. subject to judicial process the same as any other litigant, the Supreme Court said (p. 728):

“ . . . For there can be no doubt that Congress has full power to endow the Federal Housing Administration with the Government’s immunity from suit or to determine the extent to which it may be subjected to the judicial process. (Citing authorities.)”

“As indicated in *Keifer & Keifer v. Reconstruction Finance Corp. supra*, we start from the premise that such waivers by Congress of governmental immunity in case of such federal instrumentalities should be liberally construed. This policy is in line with the cur-

rent disfavor of the doctrine of governmental immunity from suit, as evidenced by the increasing tendency of Congress to waive the immunity where federal governmental corporations are concerned. *Keifer & Keifer v. Reconstruction Finance Corp. supra.* Hence, when congress established such an agency, authorizes it to engage in commercial and business transactions with the public, and permits it to 'sue and be sued,' it cannot be lightly assumed that restrictions on that authority are to be implied. . . .” (Emphasis added.)

“. . . In the absence of such showing, it must be presumed that when Congress launched a governmental agency into the commercial world and endowed it with authority to 'sue and be sued,' that agency is not less amenable to judicial process than a private enterprise under like circumstances would be. . . .”

“In our view, however, the bridge was crossed when Congress abrogated the immunity by this 'sue and be sued' clause. And no such grave interference with the Federal function has been shown to lead us to imply that Congress did not intend the full consequences of what it said. Hence, considerations of convenience, cost and efficiency which have been urged here are for Congress which, as we have said, has full authority to make such restrictions on the 'sue and be sued' clause as seem to it appropriate or necessary.”

Government agencies have been made original litigants when Congress renders them subject to suit. Traditional

government immunity from costs and expenses of litigation was denied to R. F. C. in the case of:

*R. F. C. v. Menihan*, 312 U. S. 81, 85 L. Ed. 595 (1941).

R. F. C. took assignments of mortgages, as well as directed transfers of real and personal property as security for a loan. In connection with sales of the property under foreclosure, an injunction decree was decided against the R. F. C. The successful party sought judgment for costs, which the R. F. C. resisted because it was an instrumentality of the Government.

The Supreme Court in holding that the R. F. C. was subject to the same liability as any private litigant who happened to lose a lawsuit, said in its opinion at page 83:

“The Reconstruction Finance Corporation is a corporate agency of the government, which is its sole stockholder. (January 22, 1932) 47 Stat. at L. 5, chap. 8, 15 U. S. C. A. § 601. It is managed by a board of directors appointed by the President by and with the advice and consent of the Senate. The Corporation has wide powers and conducts financial operations on a vast scale. While it acts as a governmental agency in performing its functions (see *Pittman v. Home Owners' Loan Corporation*, 308 U. S. 21, 32, 33, 84 L. ed. 11, 16, 17, 60 S. Ct. 15, 124 A. L. R. 1263), still its transactions are akin to those of private enterprises and the mere fact that it is an agency of the government does not extend to it the immunity of the sovereign. (Citing authorities.)”

“ . . . In the Keifer Case we did not find it necessary to trace to its origin the doctrine of the exceptional freedom of the United States from legal responsibility, but we observed that ‘because the doctrine



gives the government a privileged position, it has been appropriately confined.’ Hence, we declared that ‘the government does not become the conduit of its immunity in suits against its agents or instrumentalities merely because they do its work.’ *Id.* 306 U. S. p. 388, 83 L. ed. 788, 59 S. Ct. 516. Recognizing that Congress may endow a governmental corporation with the government’s immunity, we found the question to be ‘Has it done so?’ That is, immunity in the case of a governmental agency is not presumed. We sought evidence that Congress had intended that its creature, considering the purpose and scope of its powers, should have the immunity which the sovereign itself enjoyed, and we noted the practice of congress as an indication ‘of the present climate of opinion’ which had brought governmental immunity from suit into disfavor. Accordingly, being unable to find that Congress had intended immunity from suit we denied it.”

“ . . . Starting from the premise indicated in the Keifer Case that waivers by congress of governmental immunity from suit should be liberally construed in the case of federal instrumentalities—that being in line with the current disfavor of the doctrine of governmental immunity—we concluded that in the absence of a contrary showing ‘it must be presumed that when congress launched a governmental agency into the commercial world and endowed it with authority to “sue and be sued” that agency is not less amenable to judicial process than a private enterprise under like circumstances

would be.' Following that reasoning, the precise point of the decision was that the words 'sue and be sued' normally embrace all civil process incident to the commencement or continuance of legal proceedings and hence embraced garnishment as part of that process."

" . . . We apply the principle that there is no presumption that the agent is clothed with sovereign immunity. . . . ."

" . . . The additional allowance made by courts of equity in accordance with sound equity practice is likewise such an incident. *Sprague v. Ticonic Nat. Bank*, 307 U. S. 161, 83 L. ed. 1184, 59 S. Ct. 777. . . ."

" . . . We think that the unqualified authority to sue and be sued placed petitioner upon an equal footing with private parties as to the usual incidents of suits in relation to the payment of costs and allowances" (Emphasis added.)

*Sprague v. Ticonic National Bank*, cited by the Supreme Court in *R. F. C. v. Menihan*, dealt with the allowances of attorneys' fees in favor of one litigant and against others. The above quoted language of the *Menihan* case is decisive of the Special Master's fee and attorneys' fee appeals presently pending before this Honorable Court of Appeals. This however, is a subject for further treatment in appellees' briefs on those appeals.

There is great similarity between Federal Home Loan Banks which are appellants and appellees on these appeals

and Federal Land Banks created by prior Acts of Congress. A case holding such Land Banks subject to attachment in state court proceedings, exactly as any other litigant, is:

*Federal Land Bank of St. Louis v. Priddy, Circuit Judge*, 295 U. S. 229, 79 L. Ed. 1408 (1935).

Petitioner, Federal Land Bank, sought prohibition against Arkansas State Judge, because he permitted a suit and attachment against the Land Bank.

The Supreme Court of Arkansas denied prohibition and U. S. Supreme Court, on certiorari, affirmed this denial.

The action was by a real estate broker to recover a commission. The broker attached real property of the Land Bank as that of a foreign corporation. The Land Bank made special appearances and moved to vacate the attachment on the ground that it was immune from attachment.

When the trial court denied the motion, prohibition was sought. U. S. Supreme Court refused to review the holding that the Land Bank was a foreign corporation, but did decide that the Land Bank was subject to attachment.

Supreme Court said:

“Without now entering into a detailed examination of the subject, it is sufficient that this Court has already had occasion to consider the organization and functions of federal land banks, and to declare that they are instrumentalities of the federal government, engaged in the performance of an important governmental function. (Citing cases.) As such, so far as



they partake of the sovereign character of the United States, Congress has full power to determine the extent to which they may be subjected to suit and judicial process. (Citing authorities.) . . .”

“. . . federal land banks . . . were intended to be subject to the incidents of suit, including attachment and execution. In creating federal land banks as government instrumentalities, but with many of the purposes and activities of private corporations, in exempting them alone from taxation, and at the same time subjecting them, like joint stock land banks, to suit . . . Congress cannot be thought to have intended that either class of banks should be immune from attachment. . . .”

Appellants claim they are the agents or instrumentalities of the Home Loan Bank Board, or of the Government itself, and because the United States is not subject to suit, its agencies or instrumentalities are also immune. A case directly contrary to such claim is:

*Brady v. Roosevelt Steamship Company*, 317 U. S. 575, 87 L. Ed. 471 (1942).

Action in tort for wrongful death caused by negligence. Defendant was a private steamship company operating a vessel owned by the U. S. Maritime Commission. The private steamship company claimed immunity from suit because the contract under which it was operating the ship made the United States directly liable for all obligations of the operator of the ship.

In denying immunity to suit to the private corporation, the United States Supreme Court said:

“For when it comes to the utilization of corporate facilities in the broadening phases of federal activities in the commercial or business field, immunity from suit is not favored. (Citing authorities.) . . .

“Moreover, if petitioner had a cause of action against respondent, it is difficult to see how she could be deprived of it by reason of a contract between respondent and the Commission. Immunity from suit on a cause of action which the law creates cannot be so readily obtained. (Citing authorities.) The rights of principal and agent inter se are not the measure of the rights of third persons against either of them for their torts. . . .”

#### SUMMARY OF IMMUNITY TO SUIT.

Appellants contend that because they are Governmental agencies their every action is beyond review by any court; that they are immune from suit; that damage claims cannot be maintained against them; in short, that they can do no wrong and are beyond all authority.

The foregoing cases demonstrate that sue or be sued corporations or agencies are exactly like any other litigant. They are liable in tort actions for damages, for costs, for “allowances”, including attorneys’ fees. They are subject to attachment or garnishment and the fact that all of their stock is owned by the Government which eventually pays such judgments, in no way affects the litigation against such Government Corporations and agencies.

IV.

APPELLANTS' ORDERS ARE ALL  
REVIEWABLE.

Appellants contend primarily that they are beyond the jurisdiction of any Court, regardless of the source of the Court's authority and regardless of where the Court may be situated, either in California where the real property and all other assets are located, or in Washington, D.C., where certain of appellants maintain their official offices.

Secondarily, appellants contend that if they are subject to the jurisdiction of some Court, they are not subject to the jurisdiction of the Court below. Yet, they told the First Congressional Committee in 1946, when this litigation was less than two weeks filed, that:

“Mr. Fahey . . .

Suit has been entered in the Federal Court in an effort to regain control of this institution. Gregory has set up the false and hypocritical cry that I acted in this matter in reprisal against him because of his effort to force the election of Berry as president of the Federal Home Loan Bank, the Los Angeles Bank. It is assumed that the courts will presently determine the justification for our action.” [R. 185.]

“Mr. Fahey: Mr. Chairman, there is much that we would be glad to submit, but this hearing has already dragged out so long. *Hearings were scheduled and this matter is pending in the courts, and I feel it is wholly unnecessary to go on.*” (Page 273 of Hearings before Special Committee to Investigate Executive agencies; House of Representatives, 79 Congress, 2nd Session, pursuant to H. Res. 88.)



“Mr. Lee: . . . when this is finally determined in court, I am sure, quite confident, that it will be determined favorable to the Federal Home Loan Bank Administration. . . .” [R. 192-193.]

By the express terms of the Administrative Procedure Act, “any person suffering legal wrong because of any agency action or adversely affected or aggrieved by such action within the meaning of any relevant statute shall be entitled to judicial review thereof.” (Title 5, Section 1009, U. S. C. Sub. 10(a). (For legislative history of Section 10, Administrative Procedure Act, see Appendix, pages 311 to 318.)

The right of review by a Court of a void or erroneous action by an agency such as appellants, existed prior to the enactment of the Administrative Procedure Act. This was recognized by the U. S. Supreme Court in the 1946-1947 appeals and writs in this very litigation (Fahey v. Mallonee, 332 U. S. 245, 91 L. Ed. 2030—1947; Ex parte Fahey, 332 U. S. 258, 91 L. Ed. 2041—1947), when, after citing the section of the Administrative Procedure Act above quoted, the U. S. Supreme Court said:

“Nor do we mean to be understood that if supervising authorities maliciously, wantonly and without cause destroy the credit of a financial institution, there are not remedies.”

As part of this quotation, the Supreme Court referred to its prior decisions in Starks v. Wickard, 321 U. S. 288, and Federal Reserve Board v. Agnew, 329 U. S. 441.

*Stark v. Wickard*, 321 U. S. 288, 88 L. Ed. 733 (1943),

was squarely in point on judicial review. It involved an action by producers of milk who were, because of rulings of the Secretary of Agriculture, which they claimed to be erroneous and beyond the Secretary's powers, receiving a lesser price for the milk which they sold. The Secretary, after hearing, had made the order of which appellants complain. The action was brought on behalf of the class of all milk producers similarly affected. The Agriculture Marketing and Agreement Act of 1937 provided in Section 8C(15)(B) for jurisdiction in equity in the district courts of the United States to review certain of the orders of the Secretary of Agriculture. The orders involved were not of the class for which judicial review was provided by the terms of the act. Therefore appellant Secretary of Agriculture moved for, and the district court granted, dismissal of the action, holding the Secretary not reviewable by any Court. The judgment of dismissal was affirmed by U. S. Court of Appeals for the District of Columbia. The U. S. Supreme Court reversed and said in part:

"We deem it clear that on the allegations of the complaint these producers have such a personal claim as justifies judicial consideration. It is much more definite and personal than the right of complainants to judicial consideration of their objections to regulations, which this Court upheld in *Columbia Broadcasting System v. United States*, 316 U. S. 407, 86 L. ed. 1563, 62 S. Ct. 1194. . . ."

Section 5(d) of the H. O. L. C. Act (12 U. S. C. 1461), the Act of Congress considered in our 1947 U. S. Supreme Court decision, does not either by its terms or

by implication, prevent judicial review. It merely authorizes the Federal Home Loan Bank Board to adopt rules and regulations for creation of Federal Savings and Loan Associations.

The U. S. Supreme Court, in *Stark v. Wickard*, also said:

“ . . . There is no direct judicial review granted by this statute for these proceedings. The authority for a judicial examination of the validity of the Secretary's action is found in the existence of courts and the intent of Congress as deduced from the statutes and precedents as hereinafter considered.

“ . . . With this recognition by Congress of the applicability of judicial review in this field, it is not to be lightly assumed that the silence of the statute bars from the courts an otherwise justiciable issue. (Citing authorities.) . . . Here, there is no forum, other than the ordinary courts, to hear this complaint. When as we have previously concluded in this opinion, definite personal rights are created by federal statute, similar in kind to those customarily treated in courts of law, the silence of Congress as to judicial review is, at any rate in the absence of an administrative remedy, not to be construed as a denial of authority to the aggrieved person to seek appropriate relief in the federal courts in the exercise of their general jurisdiction. . . . ”

“ . . . But under Article 3, Congress established courts to adjudicate cases and controversies as to claims of infringement of individual rights whether by unlawful action of private persons or by the exertion of unauthorized administrative power.” (Emphasis added.)



The claim of being beyond the power of all courts, made by appellants in our present appeals was likewise made by the Federal Reserve Board in one of the U. S. Supreme Court prior decisions, cited in our own *Mallonee v. Fahey* first appeal to the U. S. Supreme Court in 1947. The case was:

*Board of Governors of the Federal Reserve System v. Agnew*, 329 U. S. 441, 91 L. Ed. 408 (1947).

There the Board of Governors had removed Agnew and others as directors of a National Bank upon the grounds that they were partners in a stock brokerage firm. A bank director being such partner was prohibited by one of the sections of the National Banking Act.

The removed directors brought suit in the district court to review the action of the Board and TO ENJOIN ITS ACTION. The District Court dismissed the complaint. The Court of Appeals reversed but was divided on the question. The U. S. Supreme Court reversed the District Court and held that an injunction could be issued and the case should be considered on the merits.

The U. S. Supreme Court said:

“First. The Board contends that the removal orders of the Board made under §30 are not subject to judicial review in the absence of a charge of fraud. It relies on the absence of an express right of review and on the nature of the federal bank supervisory scheme of which §30 is an integral part. Cf. *Adams v. Nagle*, 303 U. S. 532, 82 L. ed. 999, 58 S. Ct. 687; *Switchmen’s Union of N. A. v. National Mediation Bd.*, 320 U. S. 297, 88 L. ed. 61, 64 S. Ct. 95; *Estep v. United States*, 327 U. S. 114, 90 L. ed. 567, 66 S. Ct. 423. A majority of the Court, however,

is of the opinion that the determination of the extent of the authority granted the Board to issue removal orders under §30 of the Act is subject to judicial review and that the District Court is authorized to enjoin the removal if the Board transcends its bounds and acts beyond the limits of its statutory grant of authority (citing authorities) . . . That being decided, it seems plain that the claim to the office of director is such a personal one as warrants judicial consideration of the controversy. (Citing authorities.)”

An administrative order must be justified by the findings or grounds therein stated or it will be reversed. A case illustrating this is:

*S. E. C. v. Chenery,*

which was before the U. S. Supreme Court on two successive appeals: The first in 1943—318 U. S. 80, 87 L. Ed. 626; the second in 1947—332 U. S. 194, 91 L. Ed. 1995.

In the 1943 decision (318 U. S. 80), the Supreme Court said:

“ . . . The grounds upon which an administrative order must be judged are those upon which the record discloses that its action was based.

“In confining our review to a judgment upon the validity of the grounds upon which the Commission itself based its action, we do not disturb the settled rule that, in reviewing the decision of a lower court, it must be affirmed if the result is correct ‘although the lower court relief upon a wrong ground or gave a wrong reason.’ . . . But it is also familiar appellate procedure that where the correctness of the lower court’s decision depends upon a determination of fact

which only a jury could make but which has not been made, the appellate court cannot take the place of the jury. Like considerations govern review of administrative orders. If an order is valid only as a determination of policy or judgment which the agency alone is authorized to make and which it has not made, a judicial judgment cannot be made to do service for an administrative judgment . . .”

“ . . . But the difficulty remains that the considerations urged here in support of the Commission’s order were not those upon which its action was based. . . .”

“ . . . Its action must be measured by what the Commission did, not by what it might have done. It is not for us to determine independently what is ‘detrimental to the public interest or the interest of investors or consumers’ or ‘fair or equitable’ . . . The Commission’s action cannot be upheld merely because findings might have been made and considerations disclosed which would justify its order. . . . There must be such a responsible finding. (Citing authorities.) There is no such finding here. . . . In either event the orderly functioning of the process of review requires that the grounds upon which the administrative agency acted be clearly disclosed and adequately sustained. . . . We merely hold that an administrative order cannot be upheld unless the grounds upon which the agency acted in exercising its powers were those upon which its action can be sustained.”

In the 1947 decision (332 U. S. 194), the U. S. Supreme Court said:

“When the case was first here, we emphasized a simple but fundamental rule of administrative law. That rule is to the effect that a reviewing court, in



dealing with a determination or judgment which an administrative agency alone is authorized to make, must judge the propriety of such action solely by the grounds invoked by the agency. If those grounds are inadequate or improper, the court is powerless to affirm the administrative action by substituting what it considers to be a more adequate or proper basis. . . .”

Finality of administrative finding regardless of any evidence to sustain them was rejected by the U. S. Supreme Court in the case of:

*I. C. C. v. Louisville*, 227 U. S. 88, 57 L. Ed. 431—(1913).

The statute provided: “if, after hearing, the commission shall be of the opinion . . .,” the I. C. C. contended that its order based on such “opinion” was conclusive and could not be set aside even if the finding was wholly without substantial evidence to support it.

In rejecting this contention the U. S. Supreme Court in its opinion said:

“ . . . A finding without evidence is arbitrary and baseless. And if the government’s contention is correct, it would mean that the Commission had a power possessed by no other officer, administrative body, or tribunal under our government. It would mean that, where rights depended upon facts, the Commission could disregard all rules of evidence, and capriciously make findings by administrative fiat. Such authority, however beneficently exercised in one case, could be injuriously exerted in another, is inconsistent with rational justice, and comes under the Constitution’s condemnation of all arbitrary exercise of power.

“In the comparatively few cases in which such questions have arisen it has been distinctly recognized that administrative orders, quasi judicial in character, are void if a hearing was denied; if that granted was inadequate or manifestly unfair; if the finding was contrary to the ‘indisputable character of the evidence’ (citing authorities) . . . manifestly there is no hearing when the party does not know what evidence is offered or considered, and is not given an opportunity to test, explain or refute. . . . The Commissioners cannot act upon their own information, as could jurors in primitive days. All parties must be fully apprised of the evidence submitted or to be considered, and must be given opportunity to cross-examine witnesses, to inspect documents, and to offer evidence in explanation or rebuttal. In no other way can a party maintain its rights or make its defense.”

Findings made without hearing were held reviewable in the case of:

*Chicago, etc., R. R. v. Minnesota*, 134 U. S. 418,  
33 L. Ed. 970 (1890).

The language of the statute under review was:

“That in case the Commission shall find at any time . . . it shall have power and it is hereby authorized and directed to . . .”

In holding such authority unconstitutional, the Court said:

“. . . No hearing is provided for, no summons or notice to the company before the Commission has found what it is to find and declared what it is to declare, no opportunity provided for the company to

introduce witnesses before the Commission, in fact, nothing which has the semblance of due process of law; and although, in the present case, it appears, that prior to the decision of the Commission, the Company appeared before it by its agent, and the Commission investigated . . . yet it does not appear what the character of the investigation was or how the result was arrived at . . .”

“This being the construction of the statute by which we are bound in considering the present case, we are of opinion that, so construed, it conflicts with the Constitution of the United States. . . . It deprives the Company of its right to a judicial investigation, by due process of law, under the forms and with the machinery provided by the wisdom of successive ages for the investigation judicially of the truth of a matter in controversy, and substitutes therefor, as an absolute finality, the action of a Railroad Commission which, in view of the powers conceded to it by the state court, cannot be regarded as clothed with judicial functions or possessing the machinery of a court of justice.”

The language of Section 26 of the Federal Home Loan Bank Act, Title 12, Section 1446, U. S. C., reads:

“Whenever the Board finds . . .”

The language above held unconstitutional reads:

“that in case the Commission shall at any time find. . . .”

Neither section provides for any notice or hearing to the parties to be affected by what is found. As the Supreme Court said “nothing which has the semblance of due process of law.” Congress can not be presumed to have



intended an unconstitutional enactment. The findings of the Home Loan Bank Board therefore must be subject to judicial review.

Confiscation of property rights (even the right of possession) without hearing was reversed in:

*Garfield v. United States*, 53 L. Ed. 168, 211 U. S. 249 (1908).

Plaintiff received from the Secretary of the Interior a certificate of allotment of certain Indian tribal lands, upon which he went into possession of 320 acres. HE HAD RECEIVED NO PATENT, THEREFORE THE ACTION WAS NOT FINAL. Without notice or hearing and without the knowledge of plaintiff, the Secretary erased plaintiff's name from the rolls and cancelled plaintiff's allotment certificate.

The Secretary defended on the ground that Congress had given him exclusive power and the courts could not review his action.

The U. S. Supreme Court affirmed the decision requiring restoration of the cancelled allotment certificate and said:

“In the extended discussion which has been had upon the meaning and extent of constitutional protection against action without due process of law, it has always been recognized that one who has acquired rights by an administrative or judicial proceeding cannot be deprived of them without notice and an opportunity to be heard.

“The right to be heard before property is taken or rights or privileges withdrawn which have been previously legally awarded is of the essence of due process of law. It is unnecessary to recite the de-

cisions in which this principle has been repeatedly recognized. It is enough to say that its binding obligation has never been questioned in this court.” (Emphasis added.)

Even when Congress enacts that the decisions of the administrative agency “shall be final” the courts will yet consider whether or not due process has been denied or if the agency has exceeded its jurisdiction. Such a case was:

*Estep v. U. S.*, 327 U. S. 114, 90 L. Ed. 567  
(1946),

wherein the Court said:

“ . . . Thus we start with the statute which makes no provision for judicial review of the actions of the local boards or the appeal agencies. That alone, of course, is not decisive. For the silence of Congress as to judicial review is not necessarily to be construed as a denial of the power of the federal courts to grant relief in the exercise of the general jurisdiction which Congress has conferred upon them. (Citing authorities.) . . . Judicial review may indeed be required by the Constitution. (Citing authorities.) . . . the local boards in hearing and determining claims for deferment or exemption must act ‘under rules and regulations prescribed by the President.’ Those rules limit, as well as define, their jurisdiction . . . ”

Again on page 573:

“ . . . We cannot readily infer that Congress departed so far from the traditional concepts of a fair trial when it made the actions of the local boards

‘final’ as to provide that a citizen of this country should go to jail for not obeying an unlawful order of an administrative agency. . . .”

In a concurring opinion, Justice Murphy said:

“Before a person may be punished for violating an administrative order due process of law requires that the order be within the authority of the administrative agency and that it not be issued in such a way as to deprive the person of his constitutional rights. A court having jurisdiction to try such a case has a clear, inherent duty to inquire into these matters so that constitutional rights are not impaired or destroyed. Congress lacks any authority to negative this duty or to command a court to exercise criminal jurisdiction without regard to due process of law or other individual rights. To hold otherwise is to substitute illegal administrative discretion for constitutional safeguards. As this Court has previously said, ‘Under our system there is no warrant for the view that the judicial power of a competent court can be circumscribed by any legislative arrangement designed to give effect to administrative action going beyond the limits of constitutional authority. (Citing authorities.)’”

Further on page 577:

“Due process of law is not dispensed on the basis of what people might have or should have done. The sole issue here is whether due process of law is to be granted now or never. The choice seems obvious.”

Much has been said in appellants’ brief of the “grave necessity” that the confiscation of the Los Angeles Bank, shall not be subject to the tests of constitutional validity in judicial proceedings. There could be no more compell-



ing necessity than the need of a nation at war to raise an army for its defense, yet our highest court has held that even this need can not supersede the constitution.

Administrative agencies are not beyond the reach of the courts, even when given finality as to facts. Such a case is:

*American School of Magnetic Healing v. McAnnulty*, 187 U. S. 94, 47 L. Ed. 90 (U. S. Supreme Court—1902).

Appeal from district courts refusal to enjoin local postmaster from enforcement of fraud order and from dismissal of plaintiff's complaint without trial. The statute reads:

"The Postmaster General, upon evidence satisfactory to him. . . ."

may instruct postmasters to refuse delivery, etc. The lower Court held the Postmaster's action was conclusive and not subject to judicial review.

U. S. Supreme Court, in reversing, said:

"That the conduct of the postoffice is a part of the administrative department of the government is entirely true, but that does not necessarily and always oust the courts of jurisdiction to grant relief to a party aggrieved by any action by the head, or one of the subordinate officials, of that Department, which is unauthorized by the statute under which he assumes to act. The acts of all its officers must be justified by some law, and in case an official violates the law to the injury of an individual the courts generally have jurisdiction to grant relief . . . we do not mean to preclude the defendant (postmaster) from showing on the trial, if he can, that the business of complainants, as in fact conducted, amounts to a violation of the statutes as herein construed."

Wrongful administrative action was reversed in:

*Soc. Sec. Bd. v. Nierotko*, 327 U. S. 358, 90 L. Ed. 719 (1946),

wherein the Supreme Court said at page 727:

“ . . . Administrative determinations must have a basis in law and must be within the granted authority. . . . An agency may not finally decide the limits of its statutory power. That is a judicial function. . . .

“We conclude, however, that the Board’s interpretation of this statute . . . goes beyond the boundaries of administrative routine and the statutory limits. This is a ruling which excludes from the ambit of the Social Security Act payments which we think were included by Congress. It is beyond the permissible limits of administrative interpretation.”

In

*U. S. A. v. I. C. C.*, 337 U. S. 426, 93 L. Ed. 1451  
(U. S. Supreme Court—1949),

the Supreme Court held contrary to earlier decisions that the Interstate Commerce Commission rulings were non-reviewable and in holding such rulings subject to judicial review, said:

“Under the contention the order is final and not reviewable by any court even though entered arbitrarily, without substantial supporting evidence, and in defiance of law.

“Such a sweeping contention for administrative finality is out of harmony with the general legislative pattern of administrative and judicial relationships.” (Citing Administrative Procedure Act, Section 10(a) (Section 1009A, Title 5, U. S. C.) on judicial review, and also citing authorities.)

“And this court has consistently held Commission orders reviewable upon charges that the Commission had exceeded its lawful powers.”

### Conclusion—REVIEWABILITY.

That a finding should be made without notice, hearing or trial would of itself appear arbitrary and confiscatory. That such a finding should be made upon evidence gathered in secret with no possibility of the test of cross-examination is contrary to all concepts of judicial process but that finding so made should be final and conclusive and beyond the power of any court to review or reverse is completely dictatorial. It is government by administrative fiat. To state the contention in short language, the Federal Home Loan Banks, Federal Savings and Loan Association and the rights of their depositors, stockholders, creditors and others, exist only at the pleasure or whim of the appellants who at the time of the confiscations consisted of the one man Federal Home Loan Bank Administration. The foregoing Supreme Court decisions are ample precedent for the power of the courts to review and if necessary reverse government by administrative fiat.



V.

ADMINISTRATIVE REMEDIES ALREADY  
EXHAUSTED.

Appellants insist that the entire five years of litigation outlined in the description of the litigation is all premature because appellees have not “exhausted their administrative remedy.” There was no administrative remedy to exhaust when in December of 1947, appellants heeded the protests of the shareholders, abandoned the administrative hearing then set, made a general appearance before the District Court (in January, 1948), and rescinded the order appointing appellant Ammann as conservator. By ordering appellant Ammann to account with the court, and directing a certified copy of the resolution rescinding the appointment to be filed with the Court, appellants themselves submitted to the Court for decision, all remaining issues.

After such submission by appellants to the Court in January, the Court in March, ordered the appellee Association to amend its pleadings and set forth such matters as the Association had discovered upon being restored to possession of its books and records. The Association promptly did so and the amended cross-claim was filed in May of 1948. [R. 4161-4332.]

At this stage there was no administrative remedy available to any litigant as to any of the issues then submitted and pending before the Court. There have never been any administrative remedies available to the Los Angeles Bank and whatever might have been the status of the earlier administrative hearings for the Association, such hearings were in 1947 abandoned by appellants themselves.

Judicial review of the five previous administrative orders made by appellants in 1946 and 1948 was in progress. Appellants cannot adopt an administrative order in 1948, submitting the issues to the Court for decision and then adopt another administrative order in 1949 withdrawing from the Court, the very issues previously submitted.

Nor, can appellants under the guise of administrative orders, seize control of litigation against themselves and appoint themselves to occupy the positions of both plaintiffs and defendants.

Administrative hearings have their established position in governmental authority, but it is not a position supreme and superior to that of the Courts.

Administrative hearings have never been approved as an appellate procedure to vacate and nullify previous final judgments of the Federal Court against the administrators.

If appellants' position is correct, so long as year after year they continue to adopt successive administrative orders, none of their earlier orders, no matter how final or conclusive in effect they may be, can ever be reviewed by any Court.

If they can appoint a conservator in 1946, remove him in 1948 and suffer a final judgment of removal by the Federal Courts, only to reappoint another conservator or receiver in 1949, probably to again remove this reappointee on the eve of later trial on the merits, the administrators charged with fraud, malice and bad faith, can, by a perpetual succession of administrative orders, completely frustrate and nullify the Administrative Procedure Act, adopted by a long outraged Congress, to curtail and remedy a swelling tide of such administrative abuses.

One of the issues of this appeal is the integrity and validity of a final judgment of a Federal Court, made against appellants on their own confession of judgment. Is that judgment to be vacated and nullified by further administrative action of the losing litigants, or must the losing litigants apply to this Honorable Court of Appeals for the appropriate legal process to review the final judgment?

There comes a time in every administrative proceeding, just as there comes a time in every judicial proceeding, when the parties are entitled to apply for appropriate review to a higher authority.

Whatever may have been the original status in 1946 of the judicial proceeding being reviewed in this appeal from a preliminary injunction, this Honorable Court of Appeals should review the situation as it exists at the time of consideration of the appeal, or at the very earliest, at the time of the granting of the preliminary injunction appealed from.

At the time of the granting of the preliminary injunction appealed from, there had been a chain of administrative orders, most of which were final on their face, and several of which had been the subject of final judgments in the judicial proceedings in the Court below.

These administrative orders were Numbers 5082, 5083 and 5084 adopted March 29, 1946, purporting to liquidate, dissolve and consolidate the \$46,000,000.00 Los Angeles Bank. [R. 8225-8228, Footnote 5.] These orders were not either by regulations or law, subject to any administrative remedies, hearings or proceedings whatsoever. They were, however, subject to judicial review. (See pp. 220 to 235 of this brief.)



Order No. 5254 [R. 8229, Footnote 6], made in May of 1946, made without notice, hearing or trial, for the summary appointment of a conservator for the Long Beach Association, had been carried into effect by appellant Ammann's signing such order, certifying his own appointment as conservator, at the time he confiscated the \$26,000,000.00 of assets of the Association and refused to give any receipts therefor. [R. 3210-3212.]

Order No. 5309, in May of 1946, purported to provide an administrative hearing for the consideration of removal of appellant Ammann as conservator. This hearing was, on December 4, 1947, "postponed indefinitely" by Order No. 139 of Appellant Home Loan Bank Board.

On January 17, 1948, Order No. 388 of the Home Loan Bank Board was adopted, rescinding Order No. 5254, appointing appellant Ammann as conservator. [R. 8231-8232, Footnote 7.]

Order No. 388 likewise removed Ammann as conservator and required him to account with the U. S. District Court, for his twenty month's dealings with the seized \$26,000,000.00 in assets of the Association.

The District Court on January 23, 1948, in reliance upon the certified copy of Home Loan Bank Board Resolution No. 388 (which had been filed with the Court as required by the very terms of said Order No. 388), made its final order and judgment removing appellant Ammann as conservator, quieting the Association's title to its \$26,000,000.00 in assets and properties, requiring appellant Ammann to surrender possession of such assets and to account with plaintiffs and the Court for his twenty months of transactions therewith. [R. 8310-8328.]

This Court order, although objected to by the present appellants, was never appealed from by them or any other party [R. 8274-8275] and was carried into effect by the U. S. Marshal insofar as the assets could be located for enforcement of the order, and the accounting proceedings commenced.

At this stage of the administrative-judicial proceedings, appellants instituted settlement negotiations which lasted for more than a year and one-half. [R. 8239-8241.]

Nineteen months after return of the Association, appellants, unable to coerce the Association into abandonment of its claims for damages for wrongful seizure of the Association (which seizure had been rescinded by appellants themselves), now adopted the eighth in the chain of administrative orders. On September 9, 1949, they adopted Order No. 2015, requiring the Association to show cause before appellants why appellants should not appoint themselves in their guise of Federal Savings and Loan Insurance Corporation as receiver for the liquidation of the Association and for the liquidation of the litigation. [R. 8242-8247, Footnote 11.]

Exhaustion of administrative remedies is a doctrine which, like most other general rules, is subject to exceptions. It does not require that review of erroneous administrative procedure be postponed until review is impossible or fruitless. The party reviewing the administrative procedure alleged to be unlawful, malicious, arbitrary or capricious, is not required to suffer complete destruction of his business and final confiscation of his property before seeking such review.

If the Long Beach Association were compelled to undergo another period of several years of tangled titles for

its borrowers, another \$10,000,000.00 runs of withdrawals, additional hundreds of thousands of dollars of attorneys' fees, and all of the incidental destruction of another conservatorship or receivership, judicial review would very probably come too late to prevent the complete destruction of the Association. [R. 8249-8256.]

There have been other instances of administrative agencies objecting to the Court's preventing destruction of their victims because "administrative remedies had not been exhausted." The Courts, however, have been vigilant to prevent obvious impositions by one litigant upon another under the guise of administrative procedure.

A case exemplifying this doctrine is:

*Columbia Broadcasting System v. U. S. A.*, 316 U. S. 407, 86 L. Ed. 1563 (1942).

Columbia Broadcasting Company maintained a chain of approximately 120 stations throughout the United States, of which about 115 operate by contract with Columbia. The F. C. C. promulgated general regulations requiring refusal of renewal of licenses of all stations entering into certain types of contracts. The contracts so prohibited were the exact type upon which Columbia had founded its chain.

Columbia brought action in equity in U. S. District Courts in New York and sought restraining orders preventing enforcement of the regulations pending judicial review.

The day following filing of the actions in the federal courts, F. C. C. promulgated a "supplement" to its regulations. The effect of which was to grant a station a tem-



porary license while the validity of the regulations was challenged.

Columbia alleged its chain was threatened with ruin, notwithstanding the supplemental regulations, because the broadcasting stations dared not risk their license on a temporary basis in order to maintain their contracts with Columbia.

F. C. C. contended its regulations were not reviewable until it made a final order denying license thereunder. Columbia maintained the effect of the regulation was an illegal confiscation without due process of its broadcasting chain, because its contract stations dared not risk their licenses and go through lengthy judicial proceedings, as the price of maintaining a contract with Columbia.

The U. S. three-judge court at New York dismissed the action and refused the restraining order, but granted an injunction to preserve the *status quo* pending appeal.

The U. S. Supreme Court reversed dismissal of the action and in upholding the injunction, remanded the case to the District Court for trial on the merits. Supreme Court said:

“We need not stop to discuss here the great variety of administrative rulings which, unlike this one, are not reviewable—either because they do not adjudicate rights or declare them legislatively, or because there are adequate administrative remedies which must be pursued before resorting to judicial remedies, or because there is no occasion to resort to equitable remedies. But we should not for that reason fail to discriminate between them and this case in which, because of its peculiar circumstances, all the elements prerequisite to judicial review are present.

The ultimate test of reviewability is not to be found in an overrefined technique, but in the need of the review to protect from the irreparable injury threatened in the exceptional case by administrative rulings which attach legal consequences to action taken in advance of other hearings and adjudications that may follow . . .” (Emphasis added.)

In April of 1950, when the court below made its allowances on account of attorneys’ fees to counsel for appellees Los Angeles Bank, *et al.*, the records disclosed expenditures for Special Master’s fees, attorneys’ fees, and other costs of litigation aggregating approximately \$500,000.00. Appellants would nullify all of their own ten prior appeals and writs and the 20,000 pages of clerk’s transcript, and set this litigation back to 1946 to commence “administrative hearings” which they themselves abandoned irrevocably in 1947 and 1948. They hope thereby to collaterally and indirectly nullify the final judgments of the court below made against them.

Appellants in September of 1949 decided to seize the Long Beach Association for the second time. They realized that in so doing they would be vacating and setting aside the jurisdiction of the U. S. District Court, and in effect usurping the functions of this Honorable U. S. Court of Appeals. The District Court stated in Conclusion No. 7 of the Preliminary Injunction filed December 1, 1949 [R. 8299] as follows:

“ . . . said order No. 2015 . . . is in effect an attempt by the hearing therein called, for the Home Loan Bank Board to act as an appellate and

reviewing body upon the order of this Court . . . restoring said Association from said conservator to the officers of said Association, as requested by said Order No. 388 of said Board, no appeal from which order was taken and time for which appeal has long since past, . . .”

Neither the court below nor this Honorable Court of Appeals are required to stand idly by while one of the litigants usurps the functions of the appellate court and conducts a hearing to vacate a final judgment which the court below itself could not have vacated. A case refusing to vacate a consent judgment, final from failure to appeal therefrom is:

*Walling v. Miller*, 138 F. 2d 629 (C. C. A. 8, 1943).

Action was in U. S. District Court by the Wage and Hour Administrator, seeking injunction against violations of the Act and a judgment requiring defendants to pay to their employees back pay for overtime. A stipulation waiving defense and consenting to judgment was filed by the defendants and a consent decree entered, based upon such stipulation.

The action was filed in July of 1941. In January of 1942, after the judgment had become final and time for appeal had expired, defendants filed a motion to vacate the judgment upon the grounds, among others, that the District Court was without jurisdiction to enter a judgment requiring payment of overtime, because the Act did not authorize plaintiff Wage Administrator, to bring such an action. (Only the employees were authorized by the Act to bring suit for overtime.)



In November, 1942, fifteen months after judgment had been entered, the District Court granted the motion vacating the judgment for payment of overtime, upon the ground that the District Court was without jurisdiction to have entered such judgment.

On appeal, the C. C. A. reversed and said:

“ . . . Neither can it be doubted that the court at the time the decree was entered had general jurisdiction of the subject matter and of the parties. The court so found, and no appeal was taken by the defendants from that finding. . . .

“ . . . Assuming, but not deciding, that the administrator is not authorized in the first place to maintain a suit for restitution and that only the employees may do so, the inclusion of the order for restitution in the consent decree did not go to the jurisdiction or power of the court but to the merits only. . . .

“Every court in rendering judgment has the authority and does, tacitly or expressly, determine its jurisdiction over the parties and over the subject matter and its decree sustaining jurisdiction is not open to collateral attack. (Citing authorities.) And when the court which rendered the judgment, having jurisdiction over the subject matter and the parties, has power to adjudicate the issues in the class of suits to which the case belongs, its decision is on the merits . . . and the validity of its judgment, when collaterally attacked, is not affected by an erroneous decision. Such a judgment is not void, even though there be gross error in the decree.”

Administrative remedies cannot be invoked to obstruct proceedings previously pending in the Federal Courts.

The timing of the original court action and the original administrative hearing are vital in these appeals. The seizure of the Long Beach Association was May 20, 1946 [R. 3194]; Action No. 5421-P.H., *Mallonee, et al. v. Fahey, et al.*, was filed in the court below May 27, 1946, by plaintiffs Shareholders Protective Committee of the Long Beach Association. [R. 1-26.]

**THESE PLAINTIFFS SHAREHOLDERS HAD NO  
RIGHT TO ANY ADMINISTRATIVE HEARING OR  
PROCEDURE.**

The Association on May 30, 1946, AFTER the court action was filed, asked for a "More Definite Statement" and for an administrative hearing. [R. 144.] Appellants Fahey and Ammann, on June 5, 1946, AFTER the court action was commenced, set their administrative hearing for July 1, 1946, at Los Angeles. [R. 147.] Appellants Home Loan Bank Board, successors to Fahey, AFTER the Supreme Court appeals and the remands therefrom, on December 4, 1947, abandoned the administrative hearing, and on January 17, 1948, by Order No. 388, confessed judgment and made a general appearance in the court below.

A case holding that first filing in Federal Court takes precedence over subsequent administration action is:

*Dwinell-Wright Co. v. National Fruit Products Co., Inc.*, 129 F. 2d 848 (C. C. A. 1, 1942).

Plaintiff sued in U. S. District Court to adjudicate ownership of trade-mark. Defendant denied validity of the plaintiff's trade-mark registration and claimed ownership of the registration.

Three weeks after answering in the Federal Court, defendant filed a petition in U. S. Patent Office for cancellation of plaintiff's trade-mark registration. Plaintiff applied to the Patent Office, for a stay of defendant's cancellation proceedings, and moved the U. S. Court for injunction to restrain defendant from prosecuting the cancellation proceedings before Patent Office.

The Examiner-in-Charge in the Patent Office granted plaintiff's motion to stay Patent Office proceedings. Defendant petitioned Commissioner of Patents, who ordered the cancellation proceedings heard immediately.

District Court granted preliminary injunction against Patent Office proceedings, pending trial of the issues pending before the District Court. Neither party had asked the District Court for cancellation of the others trade-mark registrations, but the validity and ownership of the registrations was an issue before the District Court. Defendant appealed to C. C. A. 1, which affirmed and said:

“ ‘It has long been settled that a court of equity which has first taken jurisdiction of a case may, in order to prevent vexatious and harassing litigation, enjoin the parties from further proceeding in another forum . . . Time, expense, and inconvenience may be saved both to litigants and tribunals if the court which first takes jurisdiction of an issue between two parties exercises its power to prevent multiplicity of actions and duplication of effort. It was said in *Gage v. Riverside Trust Co., Ltd., et al.*,



C. C., 86 F. 984, 985, 999, 'The proposition that the court which first acquires jurisdiction of a cause and of the parties thereto will hold and maintain it, in order to settle and end the controversy, does not admit of question.'

“ . . . undoubtedly the rule relied upon by the court below . . . is applicable when two actions are pending in courts of equal dignity within the judicial system of a single sovereignty . . . ”

(And at page 853) the Court then quoted:

“ . . . *Crosley Corp. v. Hazeltine Corp.*, 3 Cir., 122 F. 2d 925, 930, as follows:

“ ‘The Party who first brings a controversy into a court of competent jurisdiction for adjudication should, so far as our dual system permits, be free from the vexation of subsequent litigation over the same subject matter. The economic waste involved in duplicating litigation is obvious. Equally important is its adverse effect upon the prompt and efficient administration of justice. . . . ’

“Clearly it is just as harassing and vexatious, and there is just as much waste and duplication of effort involved in twice trying the same issue between the same parties whether the second trial is before an administrative tribunal or before a court, \* \* \*” (Emphasis added.)

“(12) From what has been said the fallacy is apparent in the defendant's argument to the effect

that the injunction granted interfered 'with the Commissioner of Patents in his performance of his statutory duty by denying to him the assistance, testimony and legal advice of appellant and its attorneys.' In view of the nature of the Commissioner's duties in cancellation proceedings, he is impeded by the injunction in the performance of those duties to no greater extent than a court is impeded in the performance of its duties when a party is restrained from proceeding before it."

The Administrative Procedure Act, Section 1009 U. S. C., Title 5, Subdivision (c), Reviewable Acts, provides in part as follows:

" . . . Any preliminary, procedural, or intermediate agency action or ruling not directly reviewable shall be subject to review upon the review of the final agency action. Except as otherwise expressly required by statute, agency action otherwise final shall be final for the purposes of this subsection whether or not there has been . . . any form of reconsideration, . . . ." (Emphasis added.)

It is the obvious intent of this language that administrative orders as final as No. 388, removing the conservator, requiring an accounting, and submitting to the general jurisdiction of the court below shall not be subject to action by the agency so as to deprive the court below of jurisdiction acquired by the former final judgments and general appearance of defendants.

VI.

THERE ARE NO INDISPENSABLE PARTIES.

There can be no indispensable or unservable parties to an action *in rem* involving possession and title to real and personal property situated within the territory of the District Court.

The Court having jurisdiction of the *res* summons the parties to come and defend their rights to the *res*. Regardless of whether they appear or default, the Court proceeds to decide ownership and possession of the property. If an owner or possessor of the property is immune from suit, he must respond to the Court and present his claim for immunity, for immunity can be waived. If the claim of immunity is made, the Court must then exercise its jurisdiction to decide whether or not the claimed immunity does actually exist. Such determination is an exercise of jurisdiction by the Court to determine its jurisdiction. Often such jurisdiction can only be determined by a trial on the merits. Such a case was:

*Land v. Dollar*, 330 U. S. 731, 91 L. Ed. 1209 (1947).

Plaintiffs sought recovery from defendants, members of the U. S. Maritime Commission, of several million dollars of Dollar Steamship stock held by defendant Commissioners, who claimed ownership and title thereof. Plaintiffs claimed that the stock had only been pledged, that the debt had been paid, and that they therefore were entitled to return of both possession and title to their stock.

The Washington District Court dismissed the action as a suit against the United States. The District of Colum-



bia Court of Appeals reversed, and the U. S. Supreme Court affirmed the Court of Appeals in its holding that the action must be heard on the merits. The Supreme Court said, page 735 U. S.:

“ . . . although as a general rule the District Court would have authority to consider questions of jurisdiction on the basis of affidavits as well as the pleadings, this is the type of case where the question of jurisdiction is dependent on decision of the merits.”

“The allegations of the complaint, if proved, would establish that petitioners are unlawfully withholding respondents’ property under the claim that it belongs to the United States . . . .”

“If respondents are right in these contentions, their claim rests on their right under general law to recover possession of specific property wrongfully withheld. At common law their suit as pledgors to recover the pledged property on payment of the debt would sound in tort.<sup>5</sup>”

“If viewed in that posture, the case is very close to *United States v. Lee*, 106 U. S. 196, 27 L. ed. 171, 1 S. Ct. 240 . . . it concluded that an agent or officer of the United States who acts beyond his authority is answerable for his actions. (Citing authorities.)

“Where the right to possession or enjoyment of property under general law is in issue, and the defendants claim as officers or agents of the sovereign, the rule of *United States v. Lee*, 106 U. S. 196, 27 L. ed. 171, 1 S. Ct. 240, *supra*, has been repeatedly approved. (Citing authorities.) . . . That rule

is applicable here although we assume that record title to the shares is in the Commission . . . .”

“. . . But public officials may become tortfeasors by exceeding the limits of their authority. And where they unlawfully seize or hold a citizen's realty or chattels, recoverable by appropriate action at law or in equity, he is not relegated to the Court of Claims to recover a money judgment. The dominant interest of the sovereign is then on the side of the victim who may bring his possessory action to reclaim that which is wrongfully withheld.

“It is in the latter category that the pleadings have cast this case . . . .”

“. . . We only hold that the District Court had jurisdiction to determine its jurisdiction by proceeding to a decision on the merits.”

Personal jurisdiction over appellants Home Loan Bank Board, Fahey, *et al.*, exists under the interpleader statutes and by the general appearances made by Order No. 388 removing appellant Ammann as conservator, requiring him to account, etc., a certified copy of which Resolution, by its terms, was to be “forthwith” filed, and was filed with the court below. [R. 3404.] However, without either of these, personal jurisdiction of appellants Fahey, Home Loan Bank Board, *et al.*, is not necessary to the determination by the court below of ownership and possession of real and personal property, physically in the Registry of the Court and within the territory of the district.

In our present *Mallonee v. Fahey* appeal, the original complaints alleged that both the Los Angeles Bank and the Long Beach Association had been wrongfully seized

by defendants claiming to act as officers of the United States. That such seizures were fraudulent and maliciously made, unlawfully and beyond the authority and power of such defendants as officers of the United States. [R. 2, 26; 9466, 9501; 301, 362; 286, 302.]

The undenied allegations of the motions for the appealed injunction are an intent to make a second unlawful and malicious seizure of the Long Beach Association by said defendants, acting beyond their lawful authority and power. [R. 7797, 7809; 7694, 7725; 7659, 7676; 7682.] The language of *Land v. Dollar* is decisive of this appeal. “. . . This is the type of case where the question of jurisdiction is dependent on decision of the merits.”

Our present *Mallonee Fahey* case has not yet been fully decided on all of the merits. The preliminary injunction is issued to preserve the *status quo* until such decision on the merits. Yet appellants seek to attack the jurisdiction of the U. S. District Court at Los Angeles before such decision on the merits. The decision on the merits of necessity will decide the jurisdiction of the Court. If the seizures were as alleged, fraudulent, illegal, unlawful and beyond the authority of the seizing defendants, the District Court has jurisdiction to order return of the property and protect its judgment by injunction.

The Supreme Court said in 1947 in the first decision of *Land v. Dollar*, “The case had not been submitted for decision on the merits. Issue, indeed, had not yet been joined,” and remanded the case to the District Court for further proceedings.



It is significant that during the pendency of the litigation the Maritime Commission threatened to dispose of plaintiff's stock so as to render the issue moot and was enjoined from so doing during the pendency of the litigation by the various courts before whom the action was pending. This preliminary injunction was used as a basis to test the jurisdiction of the District Court.

It is respectfully suggested that the attempt to test jurisdiction of the District Court at Los Angeles, which is "dependent on decision of the merits" should be denied and the matter remanded for full hearings and trial, after which, on the complete record, this Honorable Court of Appeals can itself consider the correctness of the District Courts then decision of its jurisdiction. Certainly jurisdiction is established by the allegations of the complaint sufficient to enable the District Court to hear the merits of those allegations.

Appellants seek to cut off and prevent a trial on the merits before the District Court and to substitute for that trial a hearing before themselves. [R. 8268, Finding 53; R. 8269, Finding 55; R. 8271, Finding 57.] A hearing which the District Court has found is an attempt to exercise appellate jurisdiction. [R. 8297, Conclusion No. 7.] In effect, appellants seek to substitute themselves for this Honorable Court of Appeals as a reviewing body for a proposed reversal of a judgment of the District Court, now nearly two years old, removing one of appellants from possession of real and personal property and placing appellees in possession thereof.

To disguise such a proceeding as an administrative hearing does not alter its true effect.

## SUING LOCAL REPRESENTATIVES OF WASHINGTON OFFICE.

*Land v. Dollar* establishes the authority to sue the principal government officers (the members of the Maritime Commission) without thereby suing the United States. There have been a series of cases taken to the U. S. Supreme Court as a result of, decisions of this Honorable Court of Appeals for the Ninth Circuit.

Situated in the far West, three thousand or more miles from Washington, D. C., the authority of our local District Courts to adjudicate the invalidity of unlawful acts of the local agents of the Washington officers, has been of recurring concern. Two leading cases on that subject are:

*Williams v. Fanning*, 332 U. S. 490, 92 L. Ed. 95 (Dec., 1947); and

*Hynes v. Grimes Packing Company*, 337 U. S. 86, 93 L. Ed. 1231 (May, 1949).

*Williams v. Fanning*, 332 U. S. 490, 92 L. Ed. 95, involved an order by one of the President's cabinet officers, Postmaster General, after a hearing held by him in Washington, D. C., the Postmaster General issued "a fraud order" directing defendant Fanning, the Los Angeles Postmaster, to refuse payment of all money orders drawn to plaintiffs, to stamp as fraudulent and return to the senders all mail addressed to plaintiffs.

The Supreme Court said:

"Petitioners thereupon brought this suit in the District Court for the Southern District of California to enjoin respondent from carrying out the order, claiming that they had been deprived of the hearing to which they were entitled and that the fraud order

was without the support of substantial evidence. On motion of respondent the District Court dismissed the complaint, holding in accord with the view of the Ninth Circuit Court of Appeals that the Postmaster General was an indispensable party. The Circuit Court of Appeals affirmed. 158 F. 2d 95.”

After quoting a number of earlier Supreme Court decisions, the U. S. Supreme Court continues on page 493:

“These cases evolved the principle that the superior officer is an indispensable party if the decree granting the relief sought will require him to take action, either by exercising directly a power lodged in him or by having a subordinate exercise it for him.

“That principle was brought into clearer relief by *Colorado v. Toll*, 268 U. S. 228, 69 L. Ed. 927, 45 S. Ct. 505. There the director of national parks had issued regulations forbidding operation in the Rocky Mountain National Park of automobiles for hire. Toll was the superintendent of the park who was enforcing the regulation. A suit to enjoin him was allowed to be maintained without joining his superior, the director, who had promulgated the regulation. The result followed, 268 U. S. p. 230, 69 L. Ed. 929, 45 S. Ct. 505, by analogy to those cases which permit suit against a public official who invades a private right either by exceeding his authority or by carrying out a mandate of his superior. *United States v. Lee*, 106 U. S. 196, 27 L. Ed. 171, 1 S. Ct. 240; *Philadelphia Co. v. Stimson*, 223 U. S. 605, 619, 620, 56 L. Ed. 570, 576, 577, 32 S. Ct. 340, . . .

“. . . For a conflict among the circuits developed in these postal fraud cases. *National Conference on Legalizing Lotteries v. Goldman* (C. C. A. 2d N. Y.), 85 F. 2d 66, which held that the Postmaster General must be made a party, suggested that



if he were not, the local postmaster would be left under a command of his superior to do what the court has forbidden. But that seems to us immaterial if the decree which is entered will effectively grant the relief desired by expending itself on the subordinate official who is before the court. It seems plain in the present case that that will be the result even though the local postmaster alone is sued. It is he who refuses to pay money orders, who places the stamp 'fraudulent' on the mail, who returns the mail to the senders. If he desists in those acts, the matter is at an end. That is all the relief which petitioners seek. The decree in order to be effective need not require the Postmaster General to do a single thing—he need not be required to take new action either directly as in the Smith and Fall Cases or indirectly through his subordinate as in the Rutter Case. No concurrence on his part is necessary to make lawful payment of the money orders and release of the mail unstamped. Yet that is all the court is asked to command. Reversed."

Appellees in the present appeals seek removal of defendants from possession of, and title to, their seized real and personal property with the addition in the Long Beach action of preventing a second similar seizure by appellants removed from such possession and control by judgments of the District Court, approximately three years ago. Clearly if the Court below has jurisdiction against the Los Angeles Postmaster to order payment of money orders and delivery of mail on the main floor of the Federal Building at Los Angeles, the same District Court has jurisdiction over the \$14,000,000.00 in the Registry of the Court in possession of the clerk of the Court on the second floor of the same post office building at Los Angeles, California.

If jurisdiction exists over the Postmaster, it certainly must also exist over the court's own clerk who has possession of the \$14,000,000.00.

In our appeals, we have the overwhelming multiplicity of actions by the Homeowners to clear their titles. [R. 8288 to 8291.] Relief to clear California titles is completely beyond the power of any Court at Washington, D. C. If it were necessary in order to obtain jurisdiction to sue the Home Loan Bank Board members at Washington, D. C., jurisdiction would immediately be lost over the appellant San Francisco Bank, the appellees Los Angeles Bank, Title Service Company (the trustee on the thousands of deeds of trust), the 8,000 borrowers, and the hundreds of other parties to this complicated litigation. The Washington, D. C., District Court could not compel them to come to Washington and litigate. Any judgment made by the District Court in Washington, D. C., would have no effect *in rem* on the titles to, or the possession of the thousands of notes, deeds of trust, government bonds, cash, bank accounts and securities, making up the \$70,000,000.00 originally seized from the Los Angeles Bank and the Long Beach Association, all of which remains within the State of California.

This Honorable Court of Appeals for the Ninth Circuit was affirmed in:

*Hynes v. Grimes Packing Co.*, 337 U. S. 86, 93 L. Ed. 1231 (May, 1949).

Secretary of Interior adopted an order in effect depriving the plaintiff Packing Company of the right to catch salmon in certain areas in Alaskan waters.

The District Court for the Territory of Alaska granted an injunction against the enforcement of such regulations.

This Honorable Court of Appeals for the Ninth Circuit affirmed the injunction in *Hynes v. Grimes Packing Co.*, 165 F. 2d 323.

Appellants claimed Secretary of the Interior was an indispensable party. This Honorable Court of Appeals for the Ninth Circuit held the injunction against enforcing officers in Alaska was enforcable without joinder of the Secretary of the Interior in Washington, D. C.

The U. S. Supreme Court, in affirming, said at page 96 U. S. as follows:

“(a) At the outset the United States contends that the Secretary of the Interior is an indispensable party who must be joined as a party defendant in order to give the District Court jurisdiction of this suit. In *Williams v. Fanning*, 332 U. S. 490, 92 L. Ed. 95, 68 S. Ct. 188, the test as to whether a superior official can be dispensed with as a party was stated to be whether ‘the decree which is entered will effectively grant the relief desired by expending itself on the subordinate official who is before the court.’ P. 494. Such is the precise situation here. Nothing is required of the Secretary; he does not have to perform any act, either directly or indirectly. Respondents merely seek an injunction restraining petitioner from interfering with their fishing. No affirmative action is required of petitioner, and if he and his subordinates cease their interference, respondents have been accorded all the relief which they seek. The issues of the instant suit can be settled by a decree between these parties without having the Secretary of the Interior as a party to the litigation.”

Earlier in the opinion, the Supreme Court mentioned:

“The canners’ investment is substantial, running from two to five hundred thousand dollars respective-



ly . . . These packers employ over four hundred fishermen . . . and over six hundred cannery employees . . . .”

In conclusion after upholding the principle that the Secretary of the Interior was not an indispensable party, the U. S. Supreme Court said at page 126 U. S.:

“This is an equitable proceeding in which the respondents seek protection against unlawful action by petitioner, the Regional Director of the Fish and Wildlife Service of the Department of the Interior. The interests of respondents, the Indians of Karluk Reservation, and the efforts of the Department of the Interior to administer its responsibilities fairly to fishermen and Indians are involved. These are questions of public policy which equity is alert to protect. This Court is far removed from the locality and cannot have the understanding of the practical difficulties involved in the conflicts of interest that is possessed by the District Court. Therefore we think it appropriate for us to refrain from now entering a final order disposing definitely of the controversy. With our conclusion on the law as to the establishment of the reservation and the invalidity of the regulation before them, the Department and the parties should have a reasonable time, subject to the action of the District Court on the new proposals, to adjust their affairs so as to comply with our determinations.

“We therefore vacate the decrees of the District Court and the Court of Appeals and remand this proceeding to the District Court with directions to allow thirty days from the issuance of our mandate for the Secretary of the Interior to give consideration to the effect of our decision. Unless steps are taken in this proceeding the District Court, on the

expiration of thirty days, shall enter a decree enjoining the defendant Hynes and all acting in concert with him substantially as ordered in the permanent injunction entered November 6, 1946. If timely steps are taken, the District Court will, of course, be free to enter such orders as it may deem proper and not inconsistent with the present decision. Pending the entry of further orders by the District Court, the preliminary injunction entered July 18, 1946, shall apply to protect the rights of the respondents.”

In this most recent decision by the U. S. Supreme Court on these important questions the rights of a thousand fishermen and cannery employees were considered so important that they were protected by the preliminary injunction pending further action of the District Court and the U. S. Supreme Court said “This Court is far removed from the locality and cannot have the understanding of the practical difficulties involved in the conflicts of interest that is possessed by the District Court. Therefore we think it appropriate for us to refrain from now entering a final order disposing definitively of the controversy.” How much more does this language apply to the complex title tangles with which the Court below has become familiar through 4½ years of consideration of the 20,000 pages of clerks record in the more than 100 hearings held before him in this litigation of *Mallonee v. Fahey*?

The Supreme Court recognized the inequities which it might inflict by attempting to dispose of the rights of salmon fishermen in distant Alaska. In *Mallonee v. Fahey* in 1947, it equally recognized the difficulties of deal-

ing with the rights of the 16,000 depositors and the titles to the homes of the 8,000 borrowers, affected by the peculiarities of California title insurance and trust deed reconveyancing law.

In all cases, it affirmed the rights of the District Court to proceed against the local officers.

In *Williams v. Fanning*, against the local Postmaster, in *Hynes v. Grimes*, against the local representative of the Secretary of the Interior, in *Mallonee v. Fahey* against the conservator, present appellant Ammann. In *Hynes v. Grimes*, in order to compel the Secretary of the Interior to obey its orders, it authorized the District Court of Alaska to "enter a decree enjoining the defendant Hynes and all acting in concert with him substantially as ordered in the permanent injunction," unless timely steps are taken. In the meantime, it left the preliminary injunction in effect.

How much more should this rule apply to the preliminary injunction from which this present appeal is taken in *Mallonee v. Fahey*. The Home Loan Bank Board admits all allegations contained in the motion for preliminary injunction. The motions for the injunctions were verified. Among the grounds stated for the issuance of the injunction, were [R. 7797, 7809, 7694, 7725, 7659, 7676, 7682]:

(1) That the Home Loan Bank Board intended to deliberately cause another run of withdrawals similar to the \$10,000,000.00 run of such withdrawals suffered when the Association was originally seized;



(2) That the Home Loan Bank Board intended to deliberately recloud the titles of the thousands of borrowers as the same were clouded during the twenty months of the previous conservatorship;

(3) That the Home Loan Bank Board intended to liquidate the Long Beach Association and thereby liquidate the litigation and damage claims by said Association against the Home Loan Bank Board;

(4) That the Home Loan Bank Board by appointing itself as receiver for the Long Beach Association, sought thereby to obtain direction and control of such litigation in order to dismiss and terminate the same to the detriment and damage of the 16,000 shareholders who would be the recipients of any recovery made by said Association in such litigation.

In the face of these admissions, the District Court was more than justified in enjoining action by one of the defendants until the full hearing on the merits by the District Court.

Government officials usurping authority they do not have or abusing such discretion as they do have, are persistent and destructive. *Land v. Dollar* did not end with the U. S. Supreme Court decision in 1947. *Williams v. Fanning* continued long after jurisdiction of the District Court at Los Angeles was affirmed by the Supreme Court in 1947. *Hynes v. Grimes* (1950) was the subject of further consideration by this Honorable Court of Appeals only a few weeks ago in January of 1951, when dismissal of the action, denied by the District Court after the Su-

preme Court affirmance, was again appealed to this Honorable Court of Appeals.

Our present case, *Mallonee v. Fahey*, did not end by the confession of judgment by appellants Home Loan Bank Board and removal of appellant Ammann as conservator.

Only twenty months after removing appellant Ammann as conservator, appellants Home Loan Bank Board sought to reseize the appellee Association for the second time.

The injunctions upheld by the U. S. Supreme Court in *Land v. Dollar*, *Hynes v. Grimes*, and authorized in *Williams v. Fanning*, all are ample authority for the Court below in its preliminary injunction attacked on this present appeal.

Once the citizen applies to the courts to protect his property against the encroachment of unlawful administrative action, continuous protection of the citizen, by the Court, is necessary to prevent administrative confiscation not only of the citizen or his property, but of the very right to appeal to a Court for protection.

In many cases such as *Land v. Dollar*, *Hynes v. Grimes* and apparently *Mallonee v. Fahey* also, the administrative agencies attempt to exhaust the citizen and his resources, by prolonging the litigation and thereby skyrocket the expenses. Often the modest resources available to those resisting administrative encroachment can be exhausted by the overwhelming weight of Government bureaus and their unending staffs of counsel, investigators and administrators.

VII.

FINDINGS OF THE COURT ARE CONCLUSIVE.

Appellants on their appeal from a preliminary injunction, made to preserve the jurisdiction of the trial court to finally determine the issues, attack as “without support in the evidence,” 59 of the 84 findings made by the Court below. One of the findings not so attacked is as follows:

“58. That this litigation has proceeded for approximately three and a half years, and has been the subject of two proceedings before the United States Supreme Court, two appeals to the United States Ninth Circuit Court of Appeals, later dismissed, four separate actions (now consolidated or enjoined) either in the California State Superior Court or United States District Court, likewise enjoined, and of hearings on approximately 100 different occasions and proceedings in this Court, each of which lasted from a few hours to several days. Such litigation has been burdensome and expensive to the parties litigant.” [R. 8271.]

On many of the hearings referred to in this finding, present counsel for appellants were not even counsel of record, and of course could not observe the demeanor of the witnesses then testifying. The weight to be given to findings based upon lengthy hearings and knowledge of the case by the trier of the facts, in this instance the district judge who was personally present and presiding on every occasion in which evidence was taken in the then three and one-half years of this litigation, which has



resulted in a clerk's transcript of approximately 25,000 typed pages, is indicated in the case of:

*United States of America v. Yellow Cab Company*,  
338 U. S. 338, 94 L. Ed. 150 (12-5-49) (U. S.  
Supreme Court—1949).

Appeal by the Government from an adverse decision by a District Judge and from findings of fact made by such Judge. That case had likewise been the subject of prior appeals to the U. S. Supreme Court, and contained a bulky record consisting of "1674 closely printed pages" and 485 exhibits. The burden of the Government's complaint to the Supreme Court was that the trial court "ignored . . . substantially all of the facts which the Government deemed significant."

The U. S. Supreme Court in affirming the judgment of the trial judge who had presided at the "lengthy hearing extending over three weeks," said in part as follows:

"The first question proposed by the Government is whether the evidence sustains the findings of fact by the District Court. This is the basic issue, and the Government raises no question of law that has an existence independent of it. This issue of fact does not arise upon the trial court's disregard or misunderstanding of some definite and well-established fact. It extends to almost every detail of the decision, the Government saying that the trial court 'ignored . . . substantially all of the facts which the Government deemed significant.'

"What the Government asks, in effect, is that we try the case de novo on the record, reject nearly all of the findings of the trial court, and substitute contrary findings of our own. Specifications of error which are fundamental to its case ask us to reweigh

the evidence and review findings that are almost entirely concerned with imponderables, such as the intent of parties . . . , whether corporate officers were then acting in personal or official capacities, what was the design and purpose and intent of those who carried out twenty-year-old transactions, and whether they had legitimate business motives or were intending to restrain trade of their competitors . . . .”

“The Government suggests that the opinion of the trial court ‘seems to reflect uncritical acceptance of defendants’ evidence and of defendants’ views as to the facts to be given consideration in passing upon the legal issues before the Court.’ We see that it did indeed accept defendants’ evidence and sustained defendants’ view of the facts. But we are unable to discover the slightest justification for the accusation that it did so ‘uncritically.’ Also, it rejected the inferences the Government drew from its documents, but we find no justification for the statement that it ‘ignored’ them . . . .”

In our present appeals, the Court below made 84 findings of fact, covering approximately fifty typewritten pages. [R. 8212-8294.] The care thus indicated and the consideration of the record, testimony, and evidence, was similar to that in the *Yellow Cab Company* case, in which the Supreme Court said:

“. . . The judgment below is supported by an opinion, prepared with obvious care, which analyzes the evidence and shows the reasons for the findings. To us it appears to represent the considered judgment of an able trial judge, after patient hearing, that the Government’s evidence fell short of its allegations—a not uncommon form of litigation

casualty, from which the Government is no more immune than others.

“Only last term we accepted the view then advanced by the Government that for triers of fact totally to reject an opposed view impeaches neither their impartiality nor the propriety of their conclusions. We said ‘We are constrained to reject the court’s conclusion that an objective finder of fact could not resolve all factual conflicts arising in a legal proceeding in favor of one litigant. The ordinary lawsuit, civil or criminal, normally depends for its resolution on which version of the facts in dispute is accepted by the trier of fact . . .’ *National Labor Relations Board v. Pittsburgh S.S. Co.*, 337 U. S. 656, 659, 93 L. Ed. 1602, 1605, 69 S. Ct. 1283.

“Rule 52, Federal Rules of Civil Procedure, provides, among other things:

“‘Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. . . .’”

The issues of our litigation were summarized by the Supreme Court in a prior appeal in this same *Mallonee v. Fahey* case, when it said:

“It is obvious that there is more to this litigation than meets the eye on the pleadings . . . .”

*Fahey, et al. v. Mallonee, et al.*, 332 U. S. 245, 91 L. Ed. 2030 (1947).

Since 1947, many of the issues described as then untried have been determined by the Court below as a result of evidence and testimony adduced before it. The language of the Supreme Court is the *U. S. v. Yellow Cab Company* (338 U. S. 338, 94 L. Ed. 150, 12-5-49), has



particular application to appellees' charges that fraud and malice motivated the seizure of the Association when it is remembered that the agents and examiners of the supervising authorities testified before the Court and were subjected to cross-examination [R. 8209, Ftn. 3]:

“Findings as to the design, motive and intent with which men act depend peculiarly upon the credit given to witnesses by those who see and hear them. If defendants' witnesses spoke the truth, the findings are admittedly justified. The trial court listened to and observed the officers who had made the records from which the Government would draw an inference of guilt and concluded that they bear a different meaning from that for which the Government contends.”

Throughout this litigation, counsel for appellants have sought to maintain that their clients were immune to all process and suits of any Court, State or Federal. [R. 823, 5073, 6978.] They have ignored restraining orders of the District Court and they presently seek at a hearing before themselves to vacate judgments of the District Court against them. They contend that the findings of that Court are unsupported in the evidence, yet out of a 25,000 page record they designated for printing, ONLY 2546 PAGES. The language of the Supreme Court in the *U. S. v. Yellow Cab Company* case is particularly applicable.

“It ought to be unnecessary to say that Rule 52 applies to appeals by the Government as well as to those by other litigants. There is no exception which permits it, even in an antitrust case, to come to this Court for what virtually amounts to a trial de novo on the record of such findings as intent, motive, and design.” (Emphasis added.)

A case rivalling our present appeals for length of records, was:

*United States v. Aluminum Co. of America*, 148 F. 2d 416 (C. C. A. 2, 1945).

in which the U. S. Supreme Court said:

“ . . . Although the plaintiff challenged nearly all of the 407 findings of fact, with negligible exceptions these challenges were directed, not to misstatements of the evidence, but to the judge’s inferences—alleged to be ‘clearly erroneous’ . . .

“ . . . The plaintiff’s brief before us seems to intimate that in doing so he (the Trial Judge) was actuated by a bias in ‘Alcoa’s’ favor; and, if by that is meant that ‘Alcoa’ completely satisfied him of its innocence throughout, bias he certainly showed. That, however, is precisely the bias which all evidence is intended to create, and which it should create, if a Court does its duty. If, on the other hand, it is suggested that into his conclusions there entered motives, not derived from the evidence, the record is utterly devoid of any support for it.

“ . . . in the case of a record of over 40,000 pages like that before us, it is physically impossible for an appellate court to function at all without ascribing some *prima facie* validity to his conclusions . . . what the plaintiff is really asking is that we shall in effect reconsider the whole evidence de novo, as though it had come before us in the first instance . . . whatever may be said in favor of reversing a trial judge’s findings when he has not seen the

witnesses, when he has, and in so far as his findings depend upon whether they spoke the truth, the accepted rule is that they ‘must be treated as unassailable.’ (Citing authorities.)

“The reason for this is obvious and has been repeated over and over again; in such cases the appeal must be decided upon an incomplete record, for the printed word is only a part, and often by no means the most important part, of the sense impressions which we use to make up our minds. (Citing authorities.)” (Emphasis added.)

This rule on findings has long been followed by this Honorable Court of Appeals for the Ninth Circuit:

*Wittmayer v. United States*, 118 F. 2d 808 (C. C. A 9, 1941).

“(7) The provisions of the new procedural rules that the findings of fact of the trial judge are to be accepted on appeal unless clearly wrong (Rule 52(a), 28 U. S. C. A. following section 723c), is but the formulation of a rule long recognized and applied by courts of equity. (Citing authorities.)

“(8) As was said by Mr. Justice Holmes in *Adamson v. Gilliland*, 242 U. S. 350, 353, 37 S. Ct. 169, 170, 61 L. Ed. 356 (citing *Davis v. Schwartz*, 155 U. S. 631, 636, 15 S. Ct. 237, 39 L. Ed. 289), the case is pre-eminently one for the application of the practical rule, that so far as the findings of the trial judge who saw the witnesses ‘depends upon conflicting testimony or upon the credibility of witnesses, or so far as there is any testimony consistent with the finding, it must be treated as unassailable.’ ” (Emphasis added.)



*Goldstein v. Polakoff et al.*, 135 F. 2d 45 (C. C. A. 9, 1943).

“Almost at the outset appellant states in his opening brief that ‘This appeal is predicated mainly upon the contention that these findings are against the weight of the substantial evidence.’

“ . . . There is, however, nothing before us but a request that we try the case *de novo* on the record. It is true that appellant states in each of his ‘Specifications of Errors’ as to the court’s findings that ‘the finding \* \* \* is against the weight of and not supported by the substantial evidence.’ But in each instance the issue turns upon the trial court’s conclusion from substantial documentary evidence together with highly conflicting testimony of witnesses relating thereto.”

Other decisions by this Honorable Court of Appeals for the Ninth Circuit to the same effect, are:

*Occidental Life v. Thomas*, 107 F. 2d 876 (C. C. A. 9, 1939);

*Cook v. Robinson*, 194 Fed. 753 (C. C. A. 9, 1912);

*Columbian Ins. v. Quandt*, 154 F. 2d 1006 (C. C. A. 9, 1946);

*Lincoln Nat. Life v. Mathisen*, 150 F. 2d 292 (C. C. A. 9, 1945);

*Stimson v. Tarrant*, 132 F. 2d 363 (C. C. A. 9, 1942).

In:

*Wingate v. Bercut*, 146 F. 2d 725 (C. C. A. 9, 1944)

this Honorable Court of Appeals said:

“(8) Appellant attacks two findings on the ground that they are conclusions of law and not finding of ultimate facts. Beyond stating his position he presents no argument to support his claim of error. Therefore, we need not consider the point.” (Emphasis added.)

Appellants on our present appeal have attacked approximately 59 findings but nowhere in their brief have they presented any argument as to conflicting or contrary evidence or lack of evidence to support such findings.

Appellees therefore have not made a detailed analysis of the evidence adduced at the 100 hearings and contained in the over 25,000 pages of clerk's and reporter's transcripts, only 2546 pages of which appellants designated for printing and none of which they have seen fit to comment upon in their briefs.

VIII.

FALSE GROUNDS FOR ADMINISTRATIVE  
HEARING.

Order No. 2015 of Appellants Home Loan Bank Board is their attempt to seize for the second time appellee Long Beach Federal Savings and Loan Association, this time for the purpose of liquidation. There are four paragraphs in said Order No. 2015. [R. 8242-8247.]

No. 1 is as follows:

“1. The Long Beach Federal Savings and Loan Association, Long Beach, California, has failed to file the monthly and annual reports required by the Rules and Regulations for the Federal Savings and Loan System;” [R. 8242.]

Such report required an officer of the Association to verify the accuracy of the books and accounts of the institution. For twenty months, appellant Ammann made all entries in such books and accounts. He claims to have indebted the Association for \$6,300,000.00 borrowed by him from appellant San Francisco Bank. He claims to have changed the terms of payment of many of the \$12,000,000.00 of notes and deeds of trust owned by the Association, extending the maturity date, cutting the monthly payments and cutting the interest rates upon such deeds of trust. He claims to have exchanged about \$400,000.00 of stock owned by appellee Long Beach Federal Savings and Loan Association in Los Angeles Bank for stock in appellant San Francisco Bank. He has sold millions of dollars of U. S. Government bonds owned by the Association and has purchased millions of



dollars of other bonds at a different price and maturity. He claims to have paid himself from the assets of the Association for his charges for acting as conservator. Such charges are between \$73,000.00 and \$160,000.00.

These and many other matters too numerous to itemize here, are in dispute between the Association and removed conservator Ammann, in objections to his accounting. [R. 8614-8742.] The Court below, in connection with the Association not filing such reports, found in part as follows:

“65. That it presently appears that defendant A. V. Ammann, as purported conservator of said Association, was in possession of its books, records, accounts, assets and business, for approximately twenty months, from May 20, 1946 to January 24, 1948, during which period of time, all entries made in the books, records and accounts of said Association, were so made by, or under the direction of, the said defendant A. V. Ammann.

“That it is alleged that he made substantial changes in multi-million dollar amounts in various items of the assets and expenses, and capital liability and income columns of said Association’s balance sheets, and books . . .” [R. 8277.]

“66. That each and all of the foregoing, as well as the contentions of the parties, create contingencies, variations and changes in all totals of the columns of assets, liabilities, expenses, income, reserves, surplus, undivided profits and other totals and subtotals in said books, balance sheets and the reports, mentioned in said order 2015, causing binding statements of the same (prior to decision by the Court of the said accounting), to be inappropriate, impractical, and impossible.” [R. 8277.]

“67. That the forms of monthly report required by defendants Home Loan Bank Board and their subordinates, supervisors and examiners, contain the following certification:

“‘I hereby certify that the above report was taken from the books and records of said Association as of the date indicated and to the best of my knowledge is true and correct.’

“That said defendants require such certification to be signed by a responsible officer of the Association, such as its President, Vice-President, Secretary or Assistant-Secretary, and also require the affixing of the seal of said Association, thereby binding and obligating said Association by the statements therein contained. That the giving of the required monthly report, in the form required by said Board, under the circumstances in dispute in this litigation, including the said form of certification, would or might, require said Association to prejudice, waive, or abandon the litigation of the Association’s shareholders in the class action herein brought on behalf of said shareholders, without the consent, agreement, or knowledge of said shareholders, the plaintiffs in this action, suing on behalf of the class of approximately 16,000 of such shareholders, and particularly so because it presently appears that upon the seizure of said Association on May 20, 1946, by said Ammann, all the books and records of said Association were taken possession of by Ammann, without giving any receipts therefor, or any kind of a list or inventory thereof, of any kind or nature whatsoever.” [R. 8278-8279.]

In essence, if the Association gave the required monthly report, the Association would have abandoned the litigation, waived its damage claims and accepted Ammann’s

accounting as correct, all to the damage and detriment of the Association and its depositors, to the extent of many millions of dollars.

Paragraph No. 2 of Order 2015, is as follows:

“2. Said Association has failed and refused to furnish an affidavit of its president or secretary or other officer that, to the best of his knowledge and belief, the books of said Association correctly reflect the financial condition thereof, as required of all Federal savings and loan associations;” [R. 8243.]

A casual reading of this paragraph would deceive one into believing that no affidavit was given by the Association to the examiners. The Court below found such was not the case. The Court found:

“68. That said Association was examined by approximately seven examiners of defendants Home Loan Bank Board, in charge of Examiner Clifford F. Turner, for approximately 30 days, from July 18th, 1949, to August 17th, 1949, the number of such examiners varying from time to time during said period. That at the conclusion of such examination, an affidavit as to the correctness of said books, and records, of said Association, was required of the officers of said Association. That said Affidavit included verification as to correctness of entries made as to the said disputed items by the defendant A. V. Ammann as purported conservator.” [R. 8279.]

“69. That the President of said Association did make an affidavit as to the correctness of all entries and matters in said books and records of said Association, made or entered by said Associations’ officers



and directors, but said affidavit contained provisos that all such entries were subject to the outcome of the within litigation and said affiant declined to verify the accuracy of the entries in dispute in this litigation, and made by the defendant Ammann as purported conservator.

“That notwithstanding the giving of such qualified affidavit, ground No. 2 of said Order No. 2015, threatens appointment of a receiver for said Association by said defendants.” [R. 8279-8280.]

However, the events at the hearing before the Court were even more startling. The chief examiner of the seven who examined the Association for nearly a month in August, 1949, less than three weeks before the attempt of the second seizure, was called as a witness BY THE ASSOCIATION. His examination report and all notes of his examination were subpoenaed by the Association and placed in evidence. [R. 10931-11001.]

He testified and his examination report disclosed not one criticism of the Association or the conduct of its business. [R. 8211-8212.]

He was asked by Association counsel on cross-examination, if he had not given his own personal receipt in his own handwriting, for an affidavit, sworn to by the President of the Association. He at first denied that he had ever issued such a receipt. It was produced in Court and became Exhibit 11-7-49-No. 3 in evidence at the hearing and is part of the record before this Honorable Court

of Appeals. Confronted with the receipt in his own handwriting and bearing his own signature, appellants' witness admitted the giving of the receipt in his own handwriting, for the affidavit. [R. 10941-42.]

In the face of this evidence, Findings 68 and 69, above quoted by the Court, that such an affidavit was given, are attacked by appellants on this appeal as:

“ . . . clearly erroneous and without support in the evidence.”

In essence, appellants set up as a ground to justify the seizure and liquidation of their antagonist in this litigation, ‘the failure and refusal to furnish an affidavit,’ the receipt for which affidavit in the handwriting of their own chief examiner, was produced in Court. [R. 8211-8212.]

Paragraph No. 3 of said Order No. 2015 is as follows:

“3. Said Association has failed to pay the premiums for insurance of its accounts and the installments thereon due and payable on or about June 5, 1948, December 5, 1948, and June 5, 1949, in the total amount of \$36,487.25, in violation and disregard of the statutes of the United States, the Rules and Regulations for Insurance of Accounts, and its contract with the Federal Savings and Loan Insurance Corporation;” [R. 8243].

To read this ground, one would believe that the Association had made no payments whatsoever. The truth of this matter is that the Association had months previously,

paid into Court, the full sum of \$36,487.25. The Court below as part of its preliminary injunction, found:

“48. That item No. 3 of said Home Loan Bank Board Order No. 2015 alleges that the sum of \$36,487.25 in insurance premiums was not paid. Said statement in Order No. 2015 was made after said \$36,487.25 was deposited, and now is still on deposit in the Registry of this Court, in Interpleader, deposited pursuant to Orders by this Court, for such deposit, after hearing, over the objections of defendants Home Loan Bank Board, Federal Savings and Loan Insurance Corporation, and the various members and trustees thereof, respectively, defendant Ammann conservator, and his or their various deputies or subordinates.” [R. 8266.]

“49. That the time for appeal from such Order of this Court for acceptance of deposit into the Registry of this Court in interpleader, of said sum \$36,487.25, has expired and lapsed, without any appeal therefrom having been taken.” [R. 8266.]

And these findings are not even attacked on this appeal. Appellants admit thereby that they set up as a ground for the second attempt to seize, and this time to liquidate the Association for non-payment of \$36,487.25, which they knew was on deposit in the registry of the Court below, awaiting their obtaining a judgment from the Court that they were entitled to that sum of money.

The U. S. Supreme Court in *Dugas v. American Surety*, 200 U. S. 414, 81 L. Ed. 727 (1936), in describing a



payment into Court similar to that made by the appellee Association, said:

“In the interpleader suit there was an actual, complete and judicially sanctioned payment . . . While the payment was into the court’s registry, and not directly to the claimants, it nevertheless was a lawful and effective payment under the Interpleader Act. In effect the first decree converted the claims . . . into claims against the fund paid into the registry; . . .”

Defiance of the interpleader jurisdiction of the U. S. Court by an attempt to confiscate and liquidate a party to the litigation who had deposited pursuant to order of that Court, the full amount in dispute, warranted not only an injunction to prevent such confiscation, but punishment for contempt of the process of the Court in which the money was interplead.

The below Court also found:

“64. That the only amounts of money disclosed in said Order No. 2015 in any of the four grounds or reasons therein contained is the said sum of \$36,487.25, which sum, in cash, is already on deposit in the Registry of this Court, in excess of, and above the amount of said \$1,000,000.00 surety company bond. That the deposit in Court of said \$36,487.25, of disputed insurance premiums by said Association, adequately protects the interest of said Federal Savings and Loan Insurance Corporation pending adjudication of the issues of this cause, and that said \$1,000,000.00 bond adequately protects said Association and its shareholders, borrowers and others

doing business with it, pending the hearing by this Court on the merits of the issues pending herein awaiting trial.” [R. 8276.]

This finding is appealed from as not sustained by the evidence. Yet appellants have not introduced any evidence whatsoever to the Court below or otherwise, of any harm or damage they would suffer from the \$36,487.25 remaining on deposit in the Registry of the Court until appellants prove they were entitled to receive the same.

Paragraph No. 4 of said Order No. 2015 is as follows:

“4. Said Association and its officers have committed and are committing other violations of law and regulations, including violations set out in the More Definite Statement submitted to said Association on May 29, 1946, and have pursued and are pursuing a course that is jeopardizing and injurious to the interests of its members, creditors, and the public;” [R. 8243].

Except insofar as this attempts to repeat the charges claimed to have justified the first seizure, no facts whatsoever are alleged or presented. For three and a half years, appellants had every opportunity to present the prior charges to the Court below for determination. Rather than do so, they rescinded the order removing the conservator, restored such of the Association’s assets as remained in possession of the conservator, directed him to account with the Court below, and ordered a certified

copy of such rescission, etc., to be filed with the Court below, upon which a final judgment was entered January 23, 1948. [R. 8310.]

In connection with this assertion, the Court below found in part, as follows:

“47. . . .

“That as to the items set forth in its charge, arabic numeral No. 4 of said Order No. 2015, not included in the asserted violations set out in the ‘More Definite Statement’ submitted to said Association on May 29th, 1946, which other charges are to the general effect that the Association and its officers will commit, and have committed other violations of rules and regulations, and have pursued and are pursuing a course that is jeopardizing and injurious to the interests of its members, creditors and the public; full opportunity was given at the said hearing before this Court to present any and all charges of any matters concerning any wrongdoings, whether in violation of the rules and regulations, or otherwise, on the part of said Association and its officers, and no evidence was proffered in support thereof, or was any offer of proof made, so as to enable this Court in the exercise of its general equity powers to determine whether or not such powers should be exercised in any fashion whatsoever, for the preservation of the assets of said Association, or the assets and properties of its shareholder depositors or borrowers, or of its creditors, or of the Home Loan Bank Board, or the Federal Savings and Loan Insurance Corporation, or the public.” [R. 8264.]



The Court further found:

“35. That the process and powers of this Court are available to said Home Loan Bank Board to protect and preserve the public interest and rights involved in, or necessarily collateral to, this litigation, and to compel the performance of any alleged unfulfilled duty of said Association, or any other litigant herein, as well as to protect and preserve the assets and rights of the shareholder members and depositors and borrowers from, and other persons doing business with said Association.” [R. 8256.]

“78. That time for appeal from said Order and Judgment of this Court, dated January 23, 1948, has long since expired without any appeal therefrom having been taken. That said defendants have made no efforts or taken any proceedings to vacate or set aside said judgment before this or any other court.” [R. 8284.]

Neither Findings No. 35, nor No. 78, above quoted, have been attacked in any way on this appeal. They are therefore admitted and it is the law of this appeal that appellants refused to apply to the Court to either vacate said final judgment or in any way protect the depositors of the Association or the public. Instead, appellant themselves, undertook to vacate a final judgment by the Court below against them, remove the litigant awarded possession by such final judgment, and to seize and liquidate their antagonist in the litigation, thereby vacating the Court's judgment and terminating the litigation regardless of the jurisdiction of the Court.

IX.

THE PRELIMINARY INJUNCTION WAS  
PROPER.

AS NECESSARY AND APPROPRIATE PROCESS TO  
PRESERVE STATUS AND RIGHTS PENDING CON-  
CLUSION OF REVIEW PROCEEDINGS, PENDING  
BEFORE THE COURT BELOW.

The Association was summarily seized without notice, hearing or trial in May of 1946, upon charges of mismanagement.

In connection with the charges of “mismanagement” it is significant to observe that the Association was founded in 1934 with an initial capital of \$7,500.00; that it grew until in 1946 it had approximately \$26,000,000.00 in assets and a surplus of around approximately \$1,300,000.00. This surplus alone was 173 times its initial capital. The Association had uniformly paid dividends at rates varying from 2½% to 4% from the date of its founding in 1934 to its seizure in 1946.

This phenomenal twelve year record of growth was continuing on the very eve of confiscation. In April, 1946, the last month before its seizure, the Association gained approximately \$500,000.00 in new deposit investments.

In the first week after its seizure by defendant-appellant Ammann, the run of withdrawals was at the rate of approximately \$1,000,000.00 per day and before the run subsided, it had aggregated approximately \$10,000,000.00.

In the twenty months the defendant-appellant Ammann was in possession of the Association, it not only failed to grow, but did not recover any of the \$10,000,000.00 run.

Upon restoration of the founding management by judgment of the Court below, the interrupted growth was resumed, although at a slower rate. By August of 1949, nineteen months after the restoration of the Association, it had regained the \$10,000,000.00 run of withdrawals it had suffered under Ammann. A chart depicting the ebb and flow of new deposits discloses this situation. [See plate No. 2, page 4; Exhibit in Evidence, 11-7-49-13, Clk. Tr. 14681.]

The Association was again growing at the rate of \$500,000.00 per month. In the month of August, 1949, it obtained \$525,301.23 in new deposits.

At this stage of the litigation, three years and four months after the commencement of the litigation, one year and eight months after restoration of the Association by judgment of this Court below, and while five previous orders of the defendants were yet under review by the Court below, defendants Home Loan Bank Board adopted their Order No. 2015, providing for a hearing before themselves for the appointment of themselves (Federal Savings and Loan Insurance Corporation) as receiver for the liquidation of the prosperous and growing Long Beach Association.

Appellants Divers, Adams and LaRoque, the Home Loan Bank Board, are the sole governing authorities of appellant Federal Savings and Loan Insurance Corporation. [R. 6478-6479.] They are its board of trustees. They are the defendants against whom the Court, on January 23, 1948, entered its judgment for the restoration of the Association, its assets, premises and business. Their agent Ammann was, by said court judgment, removed from the possession and control of said Association, which he



had obtained and held under claimed authority of appellants.

By order 2015, appellants sought to appoint themselves as receivers for the liquidation of the litigation against themselves, and thereby to vacate the prior final judgment of the District Court, removing their agent from possession of the Long Beach Association.

The Administrative Procedure Act, Title 5, Section 1009 U. S. C. Subdivision (d), reads in part as follows:

“ . . . Upon such conditions as may be required and to the extent necessary to prevent irreparable injury, every reviewing court (including every court to which a case may be taken on appeal from or upon application for certiorari or other writ to a reviewing court) is authorized to issue all necessary and appropriate process to postpone the effective date of any agency action or to preserve status or rights pending conclusion of the review proceedings.”

(Emphasis added.)

The Court below, confronted with the attempt of one of the parties litigant to nullify and vacate the Court's prior judgment, and to seize and liquidate the litigant who had obtained such judgment from the Court, took the only possible step to protect the integrity of the Court's judgments and orders.

The judgment which these defendants sought to vacate by their own hearing, was one made on their own confession of judgment and general appearance before the Court below. It was their own resolution filed with the Court below, which resulted in the judgment removing appellants agent Ammann from possession.

The Court below as part of its preliminary injunction, stated as follows [R. 8301]:

“15. That this preliminary injunction, together with the prohibitions and restraints it contains each and all are necessary and appropriate process to postpone in order to prevent immediate and irreparable injury, damage and loss, the matters and things threatened by defendants Home Loan Bank Board by and in their said order No. 2015.

“That such postponement pending the trial on the merits of the matters presented by this litigation and by said Order No. 2015 is required in order to preserve the status and rights of the parties litigant herein, including the approximately 24,000 shareholders and borrowers of said association, pending conclusion by this Court of its trial on the merits of this litigation including a review of adjudication of the various prior orders, regulations and other actions of defendants Home Loan Bank Board *et al.*, and their predecessors.

“That the matters and persons concerned in this litigation and in order No. 2015 are overlapping, co-incidental and mutually inter-related. The decision of one or more of the issues in either likewise involves a decision of one or more of the issues in both said Order No. 2015 and this litigation.” [R. 8301.]

“17. The general equity jurisdiction of this Court to do justice, not piecemeal, nor by halves, and by complete disposition of all parts of litigation, any part of which is properly before this Court, includes jurisdiction to decide all issues in these actions.” [R. 8302.]

The preliminary injunction postponing (until the trial on the merits by the Court below) the destructive action

threatened appellants, was expressly authorized by remedial legislation passed by Congress. Such legislation was the Administrative Procedure Act, Sections 1001 to 1011 inclusive, U. S. C. A. Title 5, Section 1009 U. S. C. A.

The legislative history of the entire Administrative Procedure Act indicates that it was intended to prevent the very action here undertaken by appellants, that is, summary confiscations, attempts to evade the jurisdiction of the Courts, and bureaucratic dictatorship in general.

The act has been upon the statute books for nearly five years during which time many administrative agencies, including the appellants, have flouted its provisions and claim to be exempt from, or not bound by, its remedial restraints.

The United States Supreme Court has recently had occasion to pass upon and deny an agency claim of exemption from the act in the case of:

*Wong Yang Sung v. McGrath*, 339 U. S. 33;  
94 L. Ed. 616 (Feb. 20, 1950).

Immigration Department maintained it was an exception to the act and exempt from its provisions.

The Court said:

“The Administrative Procedure Act of June 11, 1946, *supra*, is a new, basic and comprehensive regulation of procedures in many agencies, more than a few of which can advance arguments that its generalities should not or do not include them. Determination of questions of its coverage may well be approached through consideration of its purposes as disclosed by its background.



“The Act thus represents a long period of study and strife; it settles long-continued and hard-fought contentions, and enacts a formula upon which opposing social and political forces have come to rest. It contains many compromises and generalities and, no doubt, some ambiguities. Experience may reveal defects. But it would be a disservice to our form of government and to the administrative process itself if the courts should fail, so far as the terms of the Act warrant, to give effect to its remedial purposes where the evils it was aimed at appear.”

The Supreme Court reviewed the legislative background of the Act and said:

“Such were the evils found by disinterested and competent students. Such were the facts before Congress which gave impetus to the demand for the reform which this Act was intended to accomplish. It is the plain duty of the courts, regardless of their views of the wisdom or policy of the act, to construe this remedial legislation to eliminate so far as its text permits the practices it condemns.

“Turning now to the case before us we find the administrative hearing a perfect exemplification of the practices so unanimously condemned.”

. . . . .

“Nor can we accord any weight to the argument that to apply the Act to such hearings will cause inconvenience and added expense to the Immigration Service. Of course it will, as it will to nearly every agency to which it is applied. . . .”

“But the difficulty with any argument premised on the proposition that the deportation statute does not require a hearing, is that without such hearing there would be no constitutional authority for deportation.

The constitutional requirements of procedural due process of law derives from the same source as Congress' power to legislate and, where applicable, permeates every valid enactment of that body.  
... .”

“... We hold that deportation proceedings must conform to the requirements of the Administrative Procedure Act if resulting orders are to have validity. Since the proceeding in the case before us did not comply with these requirements, we sustain the writ of habeas corpus and direct release of the prisoner.”

In our present appeals, the preliminary injunction issued by the Court below was expressly within the language “to preserve status or rights pending conclusion of the review proceedings” (Title 5 Section 1009(d) U. S. C. A.). The review proceedings in the Court below had been pending in the Courts for three years and a half, prior to the adoption of Order No. 2015 on September 9, 1949.

The preliminary injunction appealed from was within the express terms of the act and also within the intent of Congress.

Such Congressional intent is disclosed in the Committee Reports, debates and legislative history. (See appendix, pp. 311 to 318, for legislative history.)

In view of the U. S. Supreme Court pronouncement that the Administrative Procedure Act is to be liberally construed to give effect to those remedial purposes where the evils it was aimed at appear, and considering the legislative history and the committee reports of both the Senate

and the House, together with the plainly expressed language of the Act itself, there can be no doubt of the authority of the Court below to prevent the grave and irreparable injury which appellants admit they intended to inflict upon the appellee Association.

**THE PRELIMINARY INJUNCTION WAS PROPER TO PROTECT THE INTEGRITY OF PREVIOUS FINAL AND INTERIM JUDGMENTS OF THE COURT BELOW.**

The Court below had inherent as well as statutory jurisdiction and authority to preserve and protect the integrity of its previous final, and interlocutory, orders and judgments, made during the 3½ years of litigation prior to the preliminary injunction attacked on this appeal. Among such orders and judgments affecting the titles of parcels of real property and the possession of millions of dollars of assets and securities including government bonds, cash, promissory notes and similar valuables, are the following:

1. "Order That the Petition of the Shareholders Be Granted and That The Conservator For The Long Beach Federal Saving and Loan Association Be Removed And Its Assets Returned To The Directors And Officers Of The Association",

dated January 23, 1948, which when enforced by the United States Marshal, took, possession and control of approximately \$26,000,000.00 in assets, and the premises, business and management of said Long Beach Association, from the defendants and placed the officers and directors of the Association in such possession and control



thereof. [Exhibit A. of Preliminary Injunction attacked in this appeal. R. 8310.]

2. "Order Requiring Deposit Of Certain Notes, Deeds of Trust, U. S. Government Bonds And Other Collateral Held By The Federal Home Loan Bank of San Francisco."

dated March 13, 1948, which required delivery into the Registry of this Court of the United States Government Bonds, notes and deeds of trust aggregating approximately \$14,000,000.00, which was complied with by the surrender of such \$14,000,000.00 in assets into the Registry of the Court by appellants. [Exhibit F. of Preliminary Injunction attacked in this appeal. R. 8399.]

3. "Order For Delivery of Notes and Trust Deeds (Excess Collateral) From Clerk of Court To Long Beach Federal Savings and Loan Association,"

dated March 26, 1948, which delivered from the Registry of the Court into the possession of said Association and its officers and directors, and transferred the legal title from the other defendants and cross-defendants to said Association, on notes and deeds of trust, having a face value of approximately \$8,500,000.00. [Exhibit H. of Preliminary Injunction attacked in this appeal. R. 8526.]

4. "Findings of Fact, Conclusions of Law and Interlocutory Decree of Injunction",

dated July 30, 1948, which enjoined appellant San Francisco Bank, its officers, directors, attorneys, agents, etc. as well as all other parties to Northern District Court Action No. 28203-G from further prosecution of said

action or from commencing any other action in any other Court to determine or adjudicate any of the issues pending in the Court below. [Exhibit D. of Preliminary Injunction attacked in this appeal. R. 8362.]

5. "Preliminary Injunction Enjoining Prosecution of Remanded Action And Order of Remand,"

dated February 2, 1949, a preliminary injunction enjoining and restraining all parties to the remanded action from any further prosecution of proceedings therein pending adjudication on the merits in the Court below. Among the parties thus enjoined are the present appellants who were named as such parties to said remanded action in cross-claims in interpleader and otherwise by various of the appellees to this appeal. [R. 3465, 9817, 9847, 1948, 9848, 3811, 3939, 3941.]

All of the foregoing, as well as many other orders and judgments, both interlocutory and final of the Court below, would be wholly ineffective, defied and vacated, if appellant Home Loan Bank Board had been permitted to carry out the threats contained in its Order No. 2015.

The parties to this litigation enjoined by the Court below, from litigating elsewhere are, as to some, required to show cause before appellant Home Loan Bank Board, and as to others, invited to intervene, under the threat that if they fail to do so, the issues pending before the Court below will be adjudicated by appellant Home Loan Bank Board in their absence.

Appellant Home Loan Bank Board proposes to appoint itself receiver to vacate the above listed orders and judgments and to take for itself, title and possession of the millions of dollars of property adjudicated thereby.

Appellant Home Loan Bank Board requires the other litigants appellees herein, to “show cause” before such appellant why it should not decide this litigation in favor of itself. This was not only defiance of all power and jurisdiction in the Court below, but was also a direct usurpation of the appellate jurisdiction of this Honorable Court of Appeals. Under the constitution and statutes of the United States vacating of Federal Court judgment is an exercise of a judicial power, which could only be done either by application to the Court below, or by appeal or writ to this Honorable Court of Appeals.

It is indeed significant that after the Court below enjoined appellants from vacating and setting aside its orders and judgments, that then, and only then, did appellants apply to this Honorable Court of Appeals for the extraordinary writs of prohibition, mandamus, etc. to set aside and vacate the very judgments as to which they had, by their Order No. 2015, required the other litigants to “show cause” why appellant Home Loan Bank Board should not vacate. Such writs were denied by this Court of Appeals in June 1950.

The authority of the Court below to protect the integrity and validity of its judgments and orders has been upheld in a long line of United States Supreme Court decisions. Among such cases are:

*Looney v. East Texas Rwy. Co.*, 247 U. S. 216,  
62 L. Ed. 1084 (U. S. Supreme Court, 1918).

Appellee railroads were obeying I. C. C.'s Orders as to rates. Attorney General of Texas sought State Court action, inflicting penalties upon railroads for obedience to I. C. C.'s orders.



U. S. District Court granted injunction against the Attorney General who appealed to the Supreme Court, which affirmed and said:

“ . . . our conclusion is that the present status should be maintained until such time as this court may consider all of the grave questions of law and all of the great mass of facts connected with this complicated and important litigation. . . . ”

“The use of the writ of injunction by Federal Courts first acquiring jurisdiction over the parties or the subject matter of a suit, for the purpose of protecting and preserving that jurisdiction until the object of the suit is accomplished and complete justice done between the parties, is familiar and long established practice. (Citing Authorities.)”

Another case wherein the Federal Court, by injunction, protected title to real property acquired under its earlier judgment was:

*Julian v. Central Trust Company*, 193 U. S. 629, 48 L. Ed. 629 (U. S. Supreme Court, 1904).

Plaintiff purchased real property under a decree of foreclosure of the District Court. Defendant instituted foreclosure proceedings in the State Court after the District Court decree and sought to levy execution under such state proceedings, against the property conveyed by the United States Court's decree.

The sheriff under state proceedings entered upon the property. The purchaser at the District Court foreclosure sale, filed a supplemental bill in the U. S. Foreclosure proceedings, seeking to enjoin interference with purchasers'

title and possession under the judgment of the U. S. Court. In affirming an injunction, the Supreme Court said:

“If the sheriff is allowed to sell the very property conveyed by the Federal decree, such action has the effect to annul and set it aside, because, in the view of the State court, it was ineffectual to pass the title to the purchaser. In such case we are of opinion that a supplemental bill may be filed in the original suit with a view to protecting the prior jurisdiction of the Federal Court and to render effectual its decree.

“In such cases, where the Federal Court acts in aid of its own jurisdiction and to render its decree effectual, it may . . . restrain all proceedings in a state court which would have the effect of defeating or impairing its jurisdiction. (Citing authorities.)”

“Nor is it an answer to say that these judgments were for causes of action arising subsequent to the confirmation of sale. The Federal court by its decree reserved the right to determine what liens or claims should be charged upon the title conveyed by the court. . . . The Federal court, in protecting the purchaser under such circumstances, was acting in pursuance of the jurisdiction acquired when the foreclosure proceedings were begun.”

“. . . In such cases the jurisdiction of the court may be invoked by supplemental bill or bill in the nature of a supplemental bill, irrespective of the citizenship of the parties.”

“. . . we are here dealing with a right and title conferred by authority of the decree of a Federal court, which may be virtually set aside and held for naught if the property awarded can be taken upon execution in suits to which the purchaser is not a party.”

The Court below, in its judgment of January 23, 1948, removing appellant Ammann from possession of the Association's assets and business, and restoring the founding management, said:

“ . . . The Court therefore reserves full power both under this order and under its otherwise existing jurisdiction to make all necessary expedient or proper additional or later orders, decrees or judgments.” [R. 8327.]

The injunction appealed from was such a later order, decree, or judgment, made necessary by appellants attempting to violate and vacate the final judgment of the Court below removing appellant Ammann and restoring said Association.

A similar case is:

*City of Orangeburg v. Southern Railway Co.*, 134 F. 2d 890 (C. C. A. 4, 1943).

In affirming an injunction to prevent seizure of possession of property the subject of litigation in Federal Court, the Fourth Circuit said at page 892:

“ . . . under the established rule set out in *Kline v. Burke Const. Co.*, 260 U. S. 266, 43 S. Ct. 79, 67 L. ed. 226, 24 A. L. R. 1077, and in many other decisions, the court, state or federal, which first acquires jurisdiction of the subject matter of a suit *in rem* holds it to the exclusion of any other court until its duty is fully performed, and to that end may enjoin the parties from proceeding in any other court when the effect of the action therein would be to defeat or to impair its own jurisdiction. . . . ”



Another Supreme Court decision affirming the power of a Court to enjoin violation of its prior judgments is:

*Dugas v. American Surety Company*, 300 U. S. 414, 81 L. Ed. 720 (U. S. Supreme Court, 1937).

The Court said:

“The power of the court to enjoin Dugas from further prosecuting his suit in the state court on the appeal bond has full support in §§2 and 3 of the Interpleader Act of 1926 before quoted, as also in settled adjudications respecting the power of a federal court to protect its jurisdiction and decrees.” (Citing authorities.) (Emphasis added.)

THE PRELIMINARY INJUNCTION WAS PROPER TO PREVENT APPELLANTS APPOINTING THEMSELVES RECEIVER OF APPELLEE LONG BEACH ASSOCIATION TO THEREBY LIQUIDATE THE ASSOCIATION AND THE LITIGATION AGAINST APPELLANTS.

Appellants Divers, Adams and LaRoque seek to appoint themselves in their *alter ego* capacity as sole trustees of appellant Federal Savings and Loan Insurance as receiver of appellee Long Beach Association.

In the litigation appellee Long Beach Association is a third-party plaintiff and cross-claimant against said appellee Federal Savings and Loan Insurance Corporation, Divers, Adams and LaRoque, *et al.*, in multi-million dollar disputes, including claims for damages aggregating approximately \$20,000,000.00.

In effect appellants seek to appoint themselves as plaintiffs in litigation to which they are now defendants and thereby to obtain control of such litigation and enabled

themselves to dismiss or discontinue the same to their own advantage and to the irreparable injury of the thousands of depositors, borrowers and customers of said appellee Association.

The Court below found [Finding No. 53, R. 8268]:

“53. That . . . the proposed order for hearing, if given its face effect, is an attempted withdrawal by one of the parties to this litigation, from this court, of many of, if not the major issues involved, and an effort to act upon those issues in its own behalf, without regard to the jurisdiction of this Court or the contentions of the many parties to this litigation who are not parties to such order.”

[And in Conclusion of Law No. 17, R. 8302, the Court said:]

“17. The general equity jurisdiction of this Court to do justice, not piece-meal nor by halves, but by complete disposition of all parts of litigation, any part of which is properly before this Court, includes jurisdiction to decide all issues in these actions.”

The injunction to prevent such gross inequity under the disguise of administrative hearings, was a requirement of any Court of conscience acting as such.

Appellants are each and all totally disqualified to exercise any trustee or fiduciary authority wherein they would decide the prosecution or discontinuance of litigation wherein they are defendants personally involved in multi-million dollar amounts. Their disqualification to act in such fiduciary capacity demonstrates their additional disqualification to act in the judicial capacity of deciding whether or not they or any other receiver, conservator, or other fiduciary, should be appointed for appellees.

Their blunt refusal to submit these issues for consideration to the Court below demonstrates their lack of confidence in the merits of their claims. If a receiver was genuinely necessary, appellants could have obtained from the Court below the appointment of an independent receiver, had they been able or willing to show any necessity for such appointment.

The flimsy pretexts of Items 1 to 4 of Order No. 2015 could bring about the appointment of a receiver for liquidation of a solvent association only if the tribunal deciding such appointment was compelled by the urge to escape personal liability in multi-million dollar damage claims.

The Court below properly refused to permit parties to the litigation to conduct such a hearing.

**THE PRELIMINARY INJUNCTION WAS PROPER TO PREVENT APPELLANTS FROM USURPING THE FUNCTIONS OF THIS HONORABLE COURT OF APPEALS AND THEMSELVES VACATING FINAL JUDGMENTS OF THE DISTRICT COURT.**

Appellants, by their confession of judgment by Order 388, a certified copy of which under appellants' own seal, was filed with the Court below, brought about the entry of a final judgment, removing appellant Ammann as conservator of appellee Long Beach Association and required Ammann to account to the Court for the seized \$26,000,-000.00.

Appellants assert the right at anytime by their own action an order, to vacate, and nullify the final judgments of the U. S. Courts, to seize and liquidate the successful litigants before said U. S. Courts.



The Court found as part of its preliminary injunction, as follows:

“78. That time for appeal from said Order and Judgment of this Court, dated January 23, 1948, has long since expired without any appeal therefrom having been taken. That said defendants have made no efforts or taken any proceedings to vacate or set aside said judgment before this or any other court.” [R. 8284.]

This finding is in no way attacked on the appeal and is therefore final and the law of the case.

The Court in Conclusion of Law No. 7 [R. 8299] said in part as follows:

“7. . . . Order No. 2015 by item No. 4 therein set forth, is in effect an attempt by the hearing therein called, for the Home Loan Bank Board to act as an appellate and reviewing body upon the order of this Court dated January 23, 1948, among other things restoring said Association from said conservator to the officers of said Association, . . . .”

The appointment of appellants as receiver for the liquidation of the appellee Association, would remove from possession and control of the Association and its assets, those placed in such possession by final judgment of the Court below. Such removal was prevented by the preliminary injunction appealed from, pending final trial on the merits in the Court below of the issues, if any, justifying such removal.

Authority for such injunction to prevent usurpation of, and interference with, the jurisdiction of the District

Court and of this Court of Appeals, is found in the cases of:

*Looney v. East Texas Rwy. Co.*, 247 U. S. 216, 62 L. Ed. 1084 (U. S. Supreme Court, 1918);

*Julian v. Central Trust Company*, 193 U. S. 93, 48 L. Ed. 629 (U. S. Supreme Court, 1904);

*City of Orangeburg v. Southern Railway Co.*, 134 F. 2d 890 (C. C. A. 4, 1943);

*Dugas v. American Surety Company*, 300 U. S. 414, 81 L. Ed. 720 (U. S. Supreme Court, 1937);

all quoted on pages 295 to 299 of this brief.

**THE PRELIMINARY INJUNCTION WAS PROPER TO PREVENT A MULTIPLICITY AND DUPLICATION OF ACTIONS AND PROCEEDINGS.**

The Court below found:

“(f) That to require the officers, witnesses, interested parties, and attorneys, together with such records and documents as may be necessary to produce at said hearing to travel to Washington, D. C., approximately 3,000 miles distant from Los Angeles, California, would constitute a needless burden and a needless duplication of the trial process of this Court and a multiplicity of actions.

“That each and all of said parties may, in the protection of their rights, desire to intervene in said hearing, and may or may not, be, by law, entitled to intervene in said hearing. That to compel them to proceed to Washington, D. C., for the purpose of presenting a petition for intervention, or to attend said hearing, would be a needless and burdensome expense upon each and all of them.” [Finding 34(f), R. 8250-8251.]

“57. That the hearings ordered by said Home Loan Bank Board’s Order No. 2015, interfere with the jurisdiction of this Court and would constitute a duplication of actions and a multiplicity of suits, hearings and proceedings for the decision, hearing and determination of questions, issues and controversies, previously presented to, and either previously decided, or now pending for decision and determination before this Court, in the said cases and matters above captioned. That a multiplicity and duplication of proceedings, suits, hearings and litigation, would cause great, irreparable, immediate and continuing loss, injury and damage, to the parties litigant in these actions now pending before this Court.” [Finding No. 57, R. 8271.]

“59. That there has been allowed on account of such expenses and attorneys charges, sums aggregating in excess of \$260,000.00, in part payment only, all of which allowances have become final by dismissal of appeals or waiver of appeals. That the duplication and multiplicity of trials and proceedings required by said defendant Home Loan Bank Board’s Order No. 2015, would unnecessarily and substantially increase such costs and expenses by many thousands of dollars.” [Finding No. 59, R. 8272.]

The correctness of this Finding No. 59 is not questioned by appellants in any of their specifications of error or points on this appeal.

Jurisdiction of the Court below to prevent such multiplicity and duplications of actions and proceedings, and the waste and expense occasioned thereby, is upheld in the cases of:



This Honorable Court of Appeals for the Ninth Circuit,  
in:

*Rossetti v. Hill*, 162 F. 2d 892 (C. C. A. 9, 1947),  
said:

“ . . . The controversy is settled by the sensible  
process of bringing all parties into one court pro-  
ceeding.” (Emphasis added.)

*Dugas v. American Surety Company*, 300 U. S.  
414, 81 L. Ed. 720 (U. S. Supreme Court, 1937);

*Treinies v. Sunshine Mining Co.*, 308 U. S. 66,  
84 L. Ed. 85 (U. S. Supreme Court, 1940);

*Mallors v. Equitable Life*, 87 F. 2d 233 (C. C. A. 7,  
1936);

*Maryland Casualty Co. v. Glassell-Taylor*, 156 F.  
2d 519 (C. C. A. 5, 1946);

*U. S. v. Sentinel Insurance*, 178 F. 2d 217 (C. C. A.  
5, 1949);

all discussed and quoted at greater length in the sections  
of this brief on Interpleader, pages 143 to 156, also are  
squarely are on this point.

**Preliminary Injunction Was Proper to Prevent Appel-  
lants From Vacating the District Court Judgment  
Requiring Appellant Ammann to Account for  
\$26,000,000.00 Seized Without Receipts.**

By final judgment of January 23, 1948, the Court below  
required appellant Ammann to, within 120 days, account  
for his twenty months dealings with the seized \$26,000,-  
000.00 of Long Beach Association assets and for the con-  
duct of its business during that time. More than three  
years after such order, Ammann has not yet satisfactorily

accounted. His accounting was rejected by the Court below upon hearing of preliminary objections thereto by appellees, the Shareholders' Protective Committee for Long Beach Association.

Appellant Ammann has been working for over a year with the assistance of as many as eleven F. B. I. accountants in an effort to amend his accounting to the satisfaction of the Court below.

Appellants, by Order No. 2015, seek to, in defiance of the judgment of the Court below, relieve appellant Ammann from the necessity of the accounting to which he appears to be unable to make.

The injunction to prevent such usurpation of the Courts' functions was obviously proper.

**THE PRELIMINARY INJUNCTION WAS PROPER TO PREVENT DELIBERATE INFLICTION OF GRAVE AND IRREPARABLE INJURY BY APPELLANTS ON APPELLEES AS COERCION AND INTIMIDATION TO COMPEL ABANDONMENT OF CLAIMS PENDING BEFORE THE COURT BELOW.**

In Finding No. 34 [R. 8249] the Court below found in subdivisions (a) to (i), inclusive, thereof, the irreparable loss, damage and injury threatened by appellants and prevented by such preliminary injunction. Throughout this brief we have stated such irreparable injuries. Completely skeletonized, they are:

(a) Undermining public confidence and faith in appellee Long Beach Association, taken from possession of appellants and given to appellees by prior order of the Court below.

(b) Causing fear in the depositors and thereby probably starting another run of withdrawals similar to, or greater than, the \$10,000,000.00 run of such withdrawals previously suffered when appellants first seized the Association in 1946.

(c) Again clouding the titles to the homes of the 8,000 borrowers from said Association, as such titles were previously clouded and rendered unmarketable during the first two years of the litigation.

(d) Needless and wasteful duplication and multiplicity of actions and proceedings.

(e) Violation of Section 5(a), Administrative Procedure Act, Title 5, U. S. C., Section 1004(a), as to convenience of parties and their representatives, by requiring them to travel 3,000 miles to Washington, D. C., to duplicate the trial before the Court below.

(f) Appellants attempting to appoint themselves as receivers for liquidation of the solvent, prosperous and growing appellee Long Beach Association and thereby to liquidate the litigation.

(g) Requiring appellees to waive and abandon this litigation and the damages which they seek, and the contentions which they make. The aggregate total of such amounts exceeds \$20,000,000.00.

Prevention of infliction of such injury, even if accidentally or unintentionally caused, would be justified. The motions for preliminary injunction alleged that appellants would deliberately and willfully inflict such injuries. Such allegations were undenied by appellants in resisting the application for injunction.



The Court below could either grant the preliminary injunction as it did, or step aside and witness the liquidation of one of the litigants before it, by others of the litigants under the guise of an administration hearing.

Such prostitution and abuse of official powers is fortunately not a frequent occurrence in our government. The condemnation by an independent Congressional Investigating Committee of such abuses, the seizure and confiscation of the Los Angeles Bank and the first seizure and attempted confiscation of the Long Beach Association, can be applied with even greater emphasis against the attempted second seizure and threatened liquidation of appellee Long Beach Association.

Ignorance of the consequences of the first confiscation cannot be pleaded as an excuse for the consequences threatened by the second attempted confiscation.

Appellants knew from the prior \$10,000,000.00 run, from the tangled titles, hundreds of thousands of dollars of litigation cost, thousands of pages of printed record, and the multitude of other damages and detriment, exactly what they were undertaking when they scheduled the second seizure of appellee Long Beach Association. Yet their only defense in resisting the preliminary injunction was an attack on the jurisdiction of the Court below to prevent their deliberate ruin of institutions accepting the savings of the public.

Any one of the foregoing grounds would justify the preliminary injunction. All of them combined demonstrate the overpowering necessity of such an injunction if any respect for courts or judicial process is to be maintained.

## CONCLUSION.

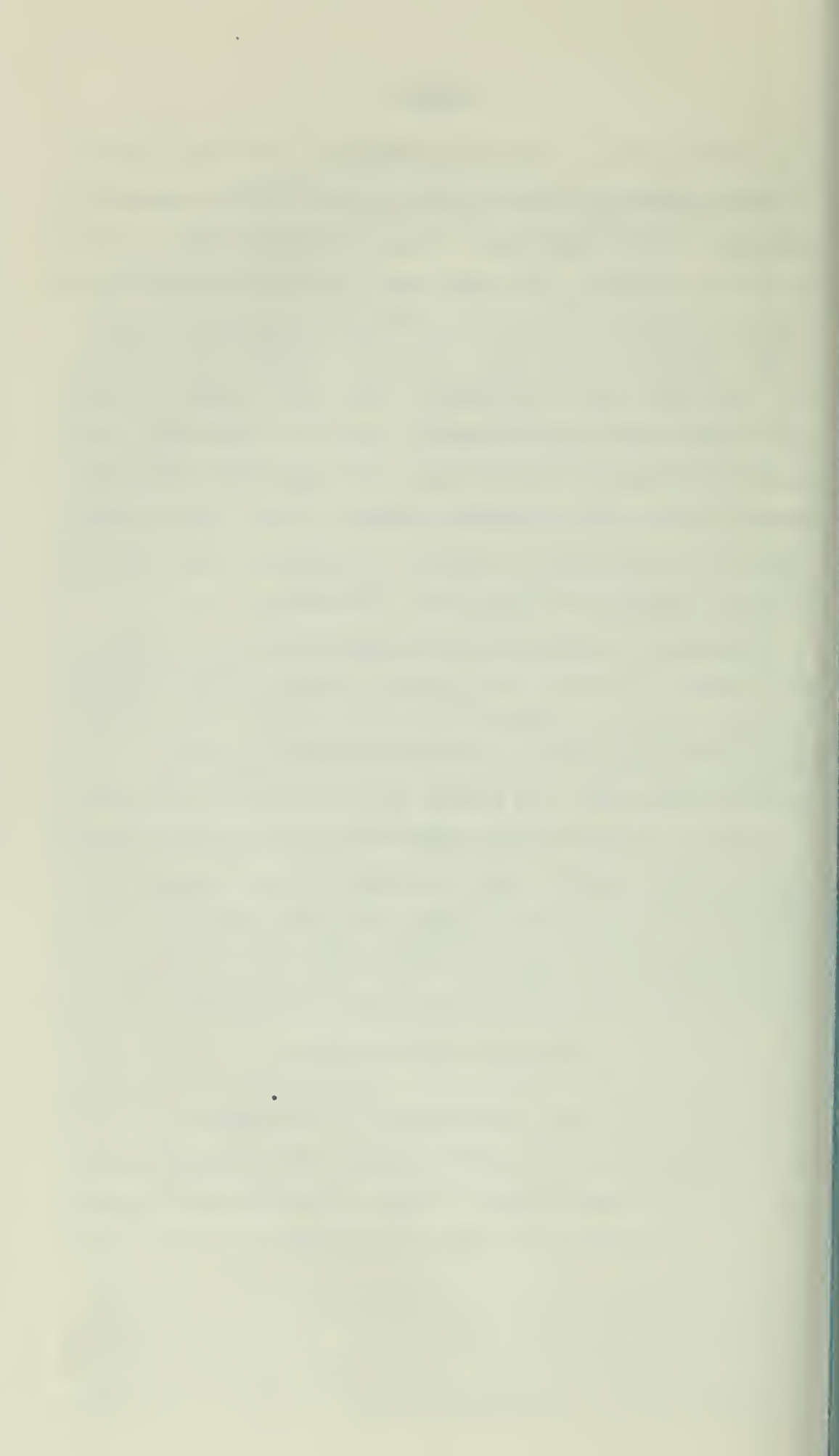
The preliminary injunction appealed from should be affirmed. The Court below had jurisdiction both *in rem* and *in personam*. *In rem* over the \$14,000,000.00 in assets in its registry and \$150,000,000.00 in real and personal property physically situated within its district. *In personam* over appellants who made their general appearance by formal resolution, certified under their seal and filed with the Court, and over appellants personally served within the territorial limits of the court below which in interpleader extends throughout the United States, including the District of Columbia.

No abuse of discretion has been shown in granting a preliminary injunction to prevent another \$10,000,000.00 run of savings withdrawals and another unnumbered years of tangled titles for the 8,000 homeowners. No abuse of discretion was shown by preventing a multiplicity of actions in proceedings duplicating the process of the Court below which have already cost approximately \$500,000.00 in attorneys' fees, costs and expenses. The preliminary injunction should be affirmed and the cases remanded for a trial on the merits of the remaining issues.

Respectfully submitted,

CHARLES K. CHAPMAN,

*Attorney for Appellee Third Party Plaintiff and  
Cross-Claimant Below, Long Beach Federal  
Savings and Loan Association.*









## APPENDIX NUMBER ONE.

LEGISLATIVE HISTORY, SECTION 10, ADMINISTRATIVE  
PROCEDURE ACT (1009, Title 5, U. S. C.).

The section is divided into five subsections (a) to (e) inclusive.

Section (a) reads:

“RIGHT OF REVIEW.—Any person suffering legal wrong because of any agency action, or adversely affected or aggrieved by such action within the meaning of any relevant statute, shall be entitled to judicial review thereof.”

Section (c) reads in part as follows:

“REVIEWABLE ACTS.—Every agency action made reviewable by statute and every final agency action for which there is no other adequate remedy in any court shall be subject to judicial review. . . .”

Section (e) reads in part as follows:

“SCOPE OF REVIEW . . . the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of any agency action. . . . (B) hold unlawful and set aside agency action, findings, and conclusions found to be (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (4) without observance of procedure required by law; (5) unsupported by substantial evidence in any case subject to the requirements of sections 7 and 8 or otherwise reviewed on the record of an agency hearing



provided by statute; or (6) unwarranted by the facts to the extent that the facts are subject to trial *de novo* by the reviewing court. In making the foregoing determinations the court shall review the whole record or such portions thereof as may be cited by any party, and due account shall be taken of the rule of prejudicial error.”

The legislative history of the sections is even more persuasive than the actual language of the sections themselves. In Senate Document No. 248, 79th Congress, Second Session, Legislative History of the Administrative Procedure Act printed at the direction of Honorable Pat McCarran, Chairman of the Senate Judiciary Committee, there occurs in the Report of the Judiciary Committee to the Senate, the following:

In discussing Section 10, Judicial Review, the Committee reports (Page 212):

“Very rarely do statutes withhold judicial review. It has never been the policy of Congress to prevent the administration of its own statutes from being judicially confined to the scope of authority granted or to the objectives specified. Its policy could not be otherwise, for in such a case statutes would in effect be blank checks drawn to the credit of some administrative officer or board.”

“. . . where statutory standards, definitions, or other grants of power deny or require action in given situations or confine an agency within limits as required by the Constitution, then the determination of the facts does not lie in agency discretion but must be supported by either the administrative or judicial record.”

In discussing Subsection (e) on Scope of Review, the Committee reports:

“This subsection provides that questions of law are for courts rather than agencies to decide in the last analysis and it also lists the several categories of questions of law . . . ‘Finding’ and ‘conclusion’ also mean failure to find or conclude as the law and the record may require. ‘Short of statutory right’ means that agencies are not authorized to give partial relief where a party demonstrates his right to the whole. ‘Without observance of procedure required by law’ means not only the procedures required by this bill but any other procedures the law may require. . . . Where for example an affected party claims in a judicial proceeding that a rule issued without an administrative hearing (and not required to be issued, after such hearing) is invalid, he may show the facts upon which he predicates such invalidity.

“The requirement of review upon ‘the whole record’ means that courts may not look only to the case presented by one party, since other evidence may weaken or even indisputably destroy that case.”

In the report of the Judiciary Committee of the House of Representatives in discussing Section 10 (e) Scope of Court Review the Committee report says (at page 217):

“. . . But the enforcement of the bill, by the independent judicial interpretation and application of its terms, is a function which is clearly conferred upon the courts in the final analysis.

“It will thus be the duty of reviewing courts to prevent avoidance of the requirements of the bill by any manner or form of indirection, and to determine the meaning of the words and phrases used. . . . If the agency is proceeding upon a statutory hearing and record, the cause

will appear there; otherwise it must be such that the agency may show the facts and considerations warranting the finding in any proceeding in which the finding is challenged. The same would be true in the case of findings other than of good cause, required in the bill. As has been said, these findings must in the first instance be made by the agency concerned but, in the final analysis, their propriety in law and on the facts must be sustainable upon inquiry by a reviewing court.

“ ‘Substantial evidence’ means evidence which on the whole record is clearly substantial, plainly sufficient to support a finding or conclusion under the requirements of section 7(c), and material to the issues. It is exceedingly important. Difficulty has come about by the practice of agencies and courts to rely upon something less—suspicion, surmise, implications, or plainly incredible evidence. Although the agency must do so in the first instance, under this bill it will be the duty of the courts to determine in the final analysis and in the exercise of their independent judgment whether on the whole of the proofs brought to their attention the evidence in a given instance is sufficiently substantial to support a finding, conclusion, or other agency action or inaction. In reviewing a case under this fifth category the court must base its judgment upon its own review of the entire record or so much thereof as may be cited by any party. . . .

“In short, where a rule or order is not required by statute to be made after opportunity for agency hearing and to be reviewed solely upon the record thereof, the facts pertinent to any relevant question of law must be



tried and determined *de novo* by the reviewing court respecting either the validity or application of such rule or order because facts necessary to the determination of any relevant question of law must be determined of record somewhere and, if Congress has not provided that an agency shall do so, then the record must be made in court.”

In the proceedings before the House, Honorable Francis E. Walter, Chairman of Subcommittee No. 3 of the Committee on the Judiciary of the House of Representatives, in commenting upon the scope of review, Section 10(e), said (page 370):

“Where there is no statutory administrative hearing to which review is confined, the facts pertinent to any relevant question of law must of course be tried and determined *de novo* by the reviewing court.

“Whether a court is proceeding upon an administrative or a judicial record, the requirement of review upon the whole record means that courts may not look only to the case presented by one of the parties but must decide upon all of the proofs submitted.”

The application of the Congressional intent as thus disclosed to the proceedings pending in the court below for review of the five final administrative orders is illustrated by the 84 findings and conclusions of the court contained in the Preliminary Injunction, Record 8212 to 8303.

## APPENDIX NUMBER TWO.

Honorable Pat McCarran, Chairman of the Senate Judiciary Committee, one of the leading sponsors of the Act, caused the Committee's Reports and Senate and House Proceedings to be printed in a 458 page booklet, officially designated as Senate Document No. 248, Administrative Procedure Act, Legislative History, 79th Congress, Calendar No. 758, Report No. 752. U. S. Government Printing Office.

The report of the Committee on the Judiciary, the U. S. Senate, reads in part, on page 191 under heading II "Approach of the Committee":

" . . . The committee has also taken the position that the bill must reasonably protect private parties even at the risk of some incidental or possible inconvenience to or change in present administrative operations."

On page 213, the exact language re. Interim Relief of Section 10(d) is again quoted with the following comment:

" . . . While it would not permit a court to grant an initial license, it provides intermediate judicial relief for every other situation in order to make judicial review effective. The authority granted is equitable and should be used by both agencies and courts to prevent irreparable injury or afford parties an adequate judicial remedy." (Emphasis added.)

On page 217 under V, "General Comments," the Senate Committee report continues, speaking of judicial review:

" . . . But the enforcement of the bill, by the independent judicial interpretation and application of its terms,

is a function which is clearly conferred upon the courts in the final analysis.

“It will thus be the duty of reviewing courts to prevent avoidance of the requirements of the bill by any manner or form of indirection, and to determine the meaning of the words and phrases used.

“. . . Judicial review . . . is indispensable since its mere existence generally precludes the arbitrary exercise of powers or assumption of powers not granted.” (Emphasis added.)

After the favorable Senate Committee Report, a similar report was adopted by the House Judiciary Committee.

The report of the Committee in the Judiciary in the House of Representatives in commenting upon Section 10(d) of the Act (Section 1009 U. S. C. A., Title 5(d)) said:

(Page 277):

“. . . statutes authorizing agency action are to be construed to extend rights pending judicial review and the exclusiveness of the administrative remedy is diminished so far as this section operates. While the section would not permit a court to grant an initial license, it provides intermediate judicial relief for every other situation in order to make judicial review effective. The authority granted is equitable and should be used by both agencies and courts to prevent irreparable injury or afford parties an adequate judicial remedy. . . .” (Emphasis added.)



Honorable Senator Pat McCarran, Chairman of the Judiciary Committee of the Senate, in addressing the Senate urging passage of the Administrative Procedure Act, said (at page 327) :

“MR. McCARRAN: . . .

“. . . By enacting this bill, the Congress expressing the will of the people—will be laying down for the guidance of all branches of the Government, and all private interests in the country, a policy respecting the minimum requirements of fair administrative procedure.”

Congressman Walter, Chairman of a Subcommittee of the Committee on the judiciary, in commenting on the report on Section 10(d) said (pp. 369-370) :

“The section is a definite statutory statement and EXTENSION OF RIGHTS PENDING JUDICIAL REVIEW. It thus, so far as necessary, AMENDS STATUTES CONFERRING exclusive authority upon administrative agencies to take or withhold action. Its operation will involve no radical departures from what has generally been regarded as an essential and inherent right of the courts; but, however, that may be, THIS PROVISION CONFERS FULL AUTHORITY TO COURTS TO PROTECT THE REVIEW PROCESS AND PURPOSE OTHERWISE EXPRESSED IN SECTION 10.”

### APPENDIX NUMBER THREE.

In the District Court of the United States, Southern District of California, Central Division.

Paul Mallonee, *et al.*, Plaintiffs, vs. John H. Fahey, *et al.*, Defendants. Civil No. 5421—P. H.

Filed Jan. 23, 1948.

#### ORDER OF REFERENCE TO SPECIAL MASTER.

An order of the above-entitled Court having been made on the 23rd day of January, 1948, effectuating the resolution and order of the Home Loan Bank Board No. 388, dated January 17, 1948, rescinding the conservatorship of the Long Beach Federal Savings and Loan Association and ordering, among other things, the time, place and manner in which said conservatorship shall be terminated, and the management and control of said Association and the assets thereof returned to the Board of Directors of said Association, the holding of a special election of a board of directors and officers of said Association, the form and method of accounting to be made by said conservator to said Association and to the Court, and other matters, and it appearing that exceptional conditions require the appointment of a Special Master to aid and assist in effectuating said order in that the transfer and delivery of the assets of the said Association from the possession of the defendant A. V. Ammann to the possession of the officers and directors of the Association is a task of considerable consequence that will require the constant attention and full-time services of an officer of the Court familiar with the involved and extended litigation and its complexities, and that the effectuation of such transfer without damaging the financial reputation of the Association is important to the community, for the Association has some 16,000 member-savers and

some 8,000 member-borrowers, receives savings of the public, and has assets allegedly totalling some twenty-six million dollars; and the Court further finds that in view of the extended and complex litigation, friction and disagreement will be extremely difficult to avoid and would imperil the financial reputation of the Association and the interests of its shareholders.

It further appears to the Court that because of the extreme complexity of the problems to be determined by such Special Master, it is to the best interests of all of the parties litigant that said Special Master should be one familiar with all of the multifold phases of said litigation from its inception. The Court has, therefore, on its own motion and initiative and without the suggestion of any other person, requested Ronald Walker, Esq., to assume such duties. Each of the principal parties to this action, insofar as it concerns the conservatorship of said Long Beach Federal Savings and Loan Association, has expressed its willingness that Ronald Walker act in such capacity, such consent having been expressed as follows:

By Wyckoff Westover, Esq., on behalf of the plaintiffs Paul Mallonee, *et al.*

By Charles K. Chapman, Esq., on behalf of the Long Beach Federal Savings and Loan Association.

By Hon. James Carter, United States Attorney, on behalf of the defendants John H. Fahey, individually and as former Federal Home Loan Bank Commissioner, A. V. Ammann, individually and as conservator for the Long Beach Federal Savings and Loan Association, all the defendant Government officials, the Home Loan Bank Board, and its predecessor Government agencies and officials.

By W. F. McKenna, Esq., on behalf of the Home Loan Bank Board.



It Is, Therefore, Ordered, Adjudged and Decreed:

1. That Ronald Walker, Esq., be and he hereby is appointed as Special Master in the above-entitled action, to conduct and regulate all proceedings by the parties litigant, or others, pursuant to said order that the conservator for the Long Beach Federal Savings and Loan Association be removed and its assets returned to the directors and officers of the Association, a copy of which said order is appended hereto and by this reference made a part hereof.
2. That said Special Master shall determine the methods of and regulate and supervise the turning over of the assets of the Long Beach Federal Savings and Loan Association by the conservator to the Board of Directors of said Association and the reception thereof by said Board of Directors acting through the officers of said Association, and all matters relating thereto.
3. That the said Special Master shall direct and supervise the special election by shareholders and members of said Long Beach Federal Savings and Loan Association, and all matters relating thereto.
4. That said Special Master shall supervise the proceedings for, and rule upon the adequacy of, the accounting to be made by said conservator pursuant to said order, and all matters relating thereto.
5. That said Special Master shall act as referee between the parties litigant, or any of them, in resolving any controversies which may arise in connection with any of the subject matters of said order and rule thereon.
6. That said Special Master shall at all times have access to the premises of the said Association and its books and records, and shall regulate and control the inspection of the assets, books and records of said Long

Beach Federal Savings and Loan Association in connection with said order of the Court.

7. That said Special Master shall have the power to issue such orders and conduct such meetings, hearings and proceedings as are necessary or appropriate in connection with the said order of the Court.

8. That said Special Master, in addition to the powers herein specified, shall have all of the general powers conferred upon a Special Master under Rule 53 of the Federal Rules of Civil Procedure.

9. That said Special Master shall prepare a report or reports upon all matters herein submitted to him at the conclusion of the proceedings, and from time to time as may be necessary, or as the Court may require.

10. That said Special Master shall have full authority to incur necessary expenses for facilities in connection with said special mastership and to employ and pay all necessary personnel, including, without limiting, stenographers, accountants, shorthand reports, agents and representatives to assist him in the orderly execution and performance of his duties. All such personnel are hereby declared to be casual labor. The Special Master shall, from time to time, file with the clerk an itemization of expenses and liabilities incurred by him, including salaries and fees, and the clerk shall make payments to said Special Master out of the funds of the Long Beach Federal Savings and Loan Association on deposit in the Registry of the Court, in accordance with said itemization.

11. That the compensation of said Special Master shall be fixed by the Court at the conclusion of his services as Special Master and from time to time upon petitions for interim allowances duly presented. All allowances

to said Special Master for necessary expenses for facilities, salaries of personnel or otherwise, and for fees, shall be paid from the funds of the Long Beach Federal Savings and Loan Association now on deposit in the Registry of the Court, or from such other assets of said Long Beach Federal Savings and Loan Association as the Court may direct.

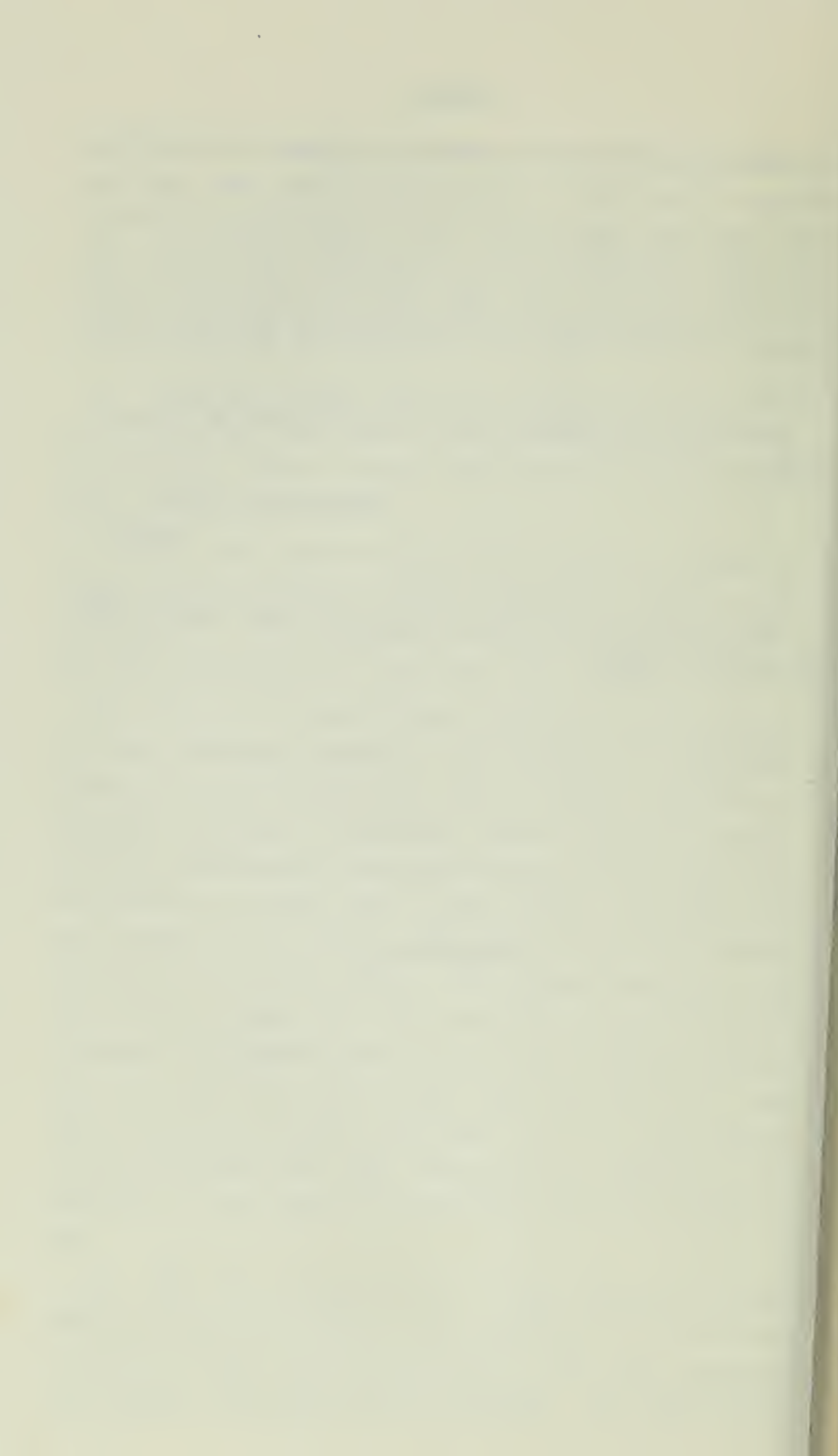
Dated at Los Angeles, Calif., this 23rd day of January, 1948.

PEIRSON M. HALL,  
Judge.

The undersigned hereby consent to and approve the foregoing Order.

(Photostat)





The undersigned hereby consent to and approve the

Foreign Order.

At witness and with  
my hand this 1st day of

Attorneys for the Plaintiff

Charles H. Hays atty. for L. B. Fed. Land & Co.  
Thomas H. Hays, by L. B. Hays  
attorney for L. B. Fed. Land & Co.  
San Francisco, Cal.

James M. Carter  
US ATTORNEY

William F. McKenna  
FOR HOME LOAN BANK BOARD

O. Melvyn & Myers by  
John Whyte  
Attys for child party defendant  
and co-defendant of Federal  
Home Loan Bank of Los Angeles

By and for the  
Attorney for the Defendant





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